

Ádám Rixer

Civil Society in Hungary

A Legal Perspective

SCHENK VERLAG

Ádám Rixer

CIVIL SOCIETY IN HUNGARY

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SCHENK VERLAG ❖ PASSAU

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List of Abbreviations

AA	Act C of 2000 on Accounting
ADR	Alternative Dispute Resolution
ÁROP	State Reform Operative Programme
CC	Constitutional Court of Hungary
CLC	Contemporary Architecture Centre Foundation
CSR	Corporate Social Responsibility
EGTC	European Grouping of Territorial Cooperation
EMMI	Ministry of Human Resources
ETA	Equal Treatment Act
ETT	European Territorial Association
FCF	Ferencváros Community Foundation
FIDESZ	Alliance of Young Democrats
FIDESZ-MPP	Alliance of Young Democrats – Hungarian Civic Party
FIROSZ	National Association of Young Roma
GONGO	Government-Organised Non-Governmental Organisation
GSZT	Economic and Social Council
GUANGO	Guano + NGO
HCSO	Hungarian Central Statistical Office
HUF	Hungarian Forint
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technology
ISTR	International Society for Third Sector Research
ISZT	Network of Youth Experts Initiatives
KALÁSZ	Federation of Agrarian Catholic Young Women
KALOT	Catholic Agrarian Young Men's National Council
KDNP	Christian Democratic People's Party
KISZ	Communist Youth Alliance
LGH	Act CLXXXIX of 2011 on Local Self-Governments of Hungary
LSG	Act LXV of 1990 on Local Self-Governments
MCPN	Multilevel Community Policing Network
MÉROSZ	National Association of Hungarian Interests
MSZMP	Hungarian Socialist Workers' Party
MSZMP KB	Central Committee of the Hungarian Socialist Workers' Party
NBF	National Patient Forum
NCA	National Civil Fund
NCFP	National Civil Fund Program
NEA	National Cooperation Fund
NEFMI	Ministry of National Resources
NER	System of National Cooperation

NGO	Non-Governmental Organisation
NKFP	National Research and Developmental Projects
NPO	Not-for-Profit Organisation
OOIH	National Educational Integration Network
ORÖ	National Roma Self-Government
PIT	Act on Personal Income Tax
PPP	Public Private Partnership
QUANGO	Quasi Non-Governmental Organisation
SAO	State Audit Office (of Hungary)
SZETA	Fund for the Support of the Poor
TASZ	Hungarian Civil Liberties Union
TDM	Tourist Destination Management organization
V4	Countries The Visegrad Group (V4) is an informal grouping of four central European countries – the Slovak Republic, the Czech Republic, the Republic of Hungary and the Republic of Poland
VAT	Value Added Tax
WINGS	Worldwide Initiatives for Grantmaker Support

Preface

One of the main reasons for which this study has been written is that there is no such paper in English addressing the historical curve and actual problems of non-governmental/non-profit sphere.

The present paper deals with the characteristics of Hungarian civil/non-profit society. The paper focuses on the legal aspects of this topic, but at the same time it takes in consideration the results and the perspectives of other sciences as well. The aim of this volume is to promote the perspectives of scholarly examination of the legal norms regulating the civil society giving viewpoints for research and offering new ways of approach.

We consider that besides the presentation of the institutions and phenomena of the civil society, it would be interesting to focus on the characteristics of those areas and domains that have not been treated despite their significance (such an area would be the situation and problems of Hungarian civil societies existing across the borders of Hungary, the role of the churches in the non-profit sector, the problems of the gipsies' civil society in Hungary).

The Author

Budapest, April 2014

Part I

INTRODUCTION

1. Possible ways of capturing the problems in connection with the civil/nonprofit sphere in Hungary. The issue of the method

1.1. The significance of jurisprudential approaches

Hungarian public administration and the science of public administration – traditionally – are very much of legal character. This is not changed by the fact that the most acknowledged researchers of the science of public administration (earlier Zoltán Magyary, in the near past Lajos Lőrincz) often expressed their concerns about the one-sided legal analysis of public administration. Nevertheless the analysis of public administration primarily with jurisprudential methods and from legal approach is comfortable, because'(...) the questions of public administration may be homogenized legally, and its mechanisms have been consciously based on law since the beginning of the 19th century'¹. For similar reasons, the civil/non-profit sector in Hungary can be captured through the concepts and methods of law and jurisprudence, while it is true that the absolutization of jurisprudential approaches represent a common problem and is a constant source of danger.

According to the presently prevailing majority opinion, the narrowest examination possibility of any field of civil/nonprofit law is the analysis of the internal principles of civil/nonprofit law. It provides for a wider analysis, and thus for a kind of 'legal internal multi-disciplinarity' if we compare the institutions of civil/nonprofit law with similar institutions of other fields of law: e.g. comparing special legal responsibility of civil/nonprofit entities, as a sub-type of the system of legal responsibility, with the elements composing the system of responsibility in other fields of law.²

Since the second part of the 19th century university education and scientific research have considered legal interpretation determinative, differences may be observed only in some minor issues, such as in addition to 'descriptive' explanations the number of works describing and analyzing the public law-constitutional law frameworks has been increasing lately. Moreover, the examination of the legal system [and of institutions showing

¹ For this, see for example Nagy Marianna: A közigazgatási felelősség – mi van a jogon túl? [Administrative responsibility – what is beyond law?] In: Fazekas Marianna (ed.): A közigazgatás tudományos vizsgálata egykor és ma: 80 éve jött létre a budapesti jogi karon a Magyar Közigazgatástudományi Intézet. [The scientific analysis of public administration in the past and today: The Institute of Hungarian Public Administration was established 80 years ago at the law faculty of Budapest] Gondolat Kiadó, Budapest, 2011. 208–209.

² Ibid. 209.

close relationship with civil/nonprofit sphere] is more and more simplified to exclusively constitution-based evaluation with aspects of constitutionality.³

Another significant change is that in the paradigm of legal thinking inspired by continental law, the functional and analytical approach and the integrative theoretical orientations gathered ground. Continental legal systems lose their character of well-structured collection of legal norms becoming a pack of norms integrated by functionality, the core of which is formed not by the legal domain they belong to, but by the practical goals and their designation.

In the light of the above mentioned aspects we may more confidently speak in Hungary about independent non-profit law as a new branch of jurisprudence, as well as about a substantive body of legislation, which are functionally linked, giving rise to a form of unification process that can also be witnessed by the attentive viewer. We may record that non-profit law, as a functional branch of jurisprudence that contains simultaneously both elements of public and private law, may be defined as a mixed jurisprudential branch. As we shall see, it is characterized by particular dogma, specific legal instruments, and by ‘typical’ civil/nonprofit norms (*see details in Part I, Chapter 3*).

1.2. Dangers of reviews strictly based on legal instruments

This complex approach – regarding all civil/nonprofit phenomena – is justified by the fact that the difference between change processes emerging in law and real social changes has traditionally faded away: ‘[T]he need to get used to the new, and the significance of the management of society mostly by law shows shifts even in cases when in reality nothing happens.’⁴

Due to these features (characteristics), during the examination, the method of model making should be used, if the civil/nonprofit sphere may be interpreted as an adaptive complex system (method) – in which the separate examination of certain elements significantly decreases the value of possible explanations. In this model the relationship of civil/nonprofit actors with the broadly interpreted governmental institutions, authorities, market and international integrations, etc. – due to the conflicts of the above mentioned pretense created by law and reality – shall be examined from all possible aspects also with the approach whether the legal/administrative reforms have touched upon the merits of the system of relations, and if yes, how and at what degree.⁵

In order to present the full picture it shall be mentioned that methods and procedures pointing into the direction of interdisciplinarity require the outmost care, because the clarity of terminology is extremely important in this aspect. For example, the notion of civil

³ Examining the issue from a different approach we may observe that it seems that the analysis of certain fields of social phenomena (analysed also in this work) is ‘reserved’ exclusively to the sciences of constitutional law and legal sociology.

⁴ Sajó András: Társadalmi-jogi változás. [Social-legal change] Akadémiai Kiadó, Budapest, 1988. 7.

⁵ For details see: Gellén Márton: A közigazgatási reformok az államszerep változásainak tükrében. [Administrative reform in light of the changes of the role of state] Dphil. Thesis/Thesis book, SZIE ÁJ DI, Győr, 2012. 14.

capacity – in its broadest meaning – refers to the ability of the civil/nonprofit sphere through which – in hope of realizing its goals – it is able to overcome certain difficult, hampering circumstances.⁶ Part of our uncertainties about notions – with legal, economic, etc. contents – originates from the fact that it is very difficult to find material, useful indicators which meet the standards of comparison, especially that these are often very complex ‘sets of aspects’ composed of several elements. One of them – for example – is the approach from the side of trust capacity⁷ which – beyond the traditional measurements of trust towards institutions – is not afraid of complex examination of mutuality based on trust, among others.⁸

1.3. Beyond law and legal sciences

We can observe a unique situation that the theoretical resources providing the conceptual framework – in spite of the above written – for the jurisprudential work belong to the field of social sciences: a feature of scientific works dealing with the interpretation of civil/non-profit legal institutions, procedures and positive law (compared to the other jurisprudential domains) are rich in arguments and approaches borrowed from the field of public policy, history, sociology, and political science

To do this, we must also add that a significant part of the research material is not written for concrete practical use. Scientific works inspired by the basic scientific works primarily (typically) focus on the theoretical understanding of the non-profit phenomenon and try to recognize the main trends and regularities seeking to explore the deeper connections, as well.

In addition to the above mentioned, our presumption is that in relation with the direct subject of this work – a legal analysis of the civil/nonprofit sphere in Hungary – for an examination which allows for drawing credible and further conclusions and founding new analyses a sort of inter- or multidisciplinary method is needed; thus in the examined subject a strong scientific and material framework should be established from the scientific methods of other social sciences,⁹ such as political sciences, organizational sciences (organization-management sciences), public policy, the narrowly interpreted science of public administration (theory of public administration and economics), broadly interpreted management sciences, statistics, sociology, social psychology or Christian social ethics or ethics of economics (!), moreover, certain natural sciences, in which, or compared to which the narrowly interpreted jurisprudential reasoning and textual examinations may receive their real place and value.

⁶ For details see: Mark Bevir: Key concepts in governance. SAGE, New Delhi, 2009. 41.

⁷ For this see e.g.: Boda Zsolt – Medve-Bálint Gergő: Intézményi bizalom a régi és az új demokráciákban. [Institutional trust in old and new democracies] Politikatudományi Szemle (2012) 21(2) 22–35.

⁸ Meleg Csilla: A bizalom hálójában – társadalmi nézőpontok. [In the net of trust – approaches of society] JURA 2012/1. 72–75.

⁹ About the possible use of natural scientific approaches and methods see e.g. Nagy Marianna: Interdiszciplináris mozaikok a közigazgatási jogi felelősség dogmatikájához. [Inter-disciplinary mosaics to the dogmatics of administrative law responsibility] ELTE – Eötvös Kiadó, Budapest, 2010.

We shall direct our attention to the fact that the rather traditional methods of the science of public administration, administrative-sociology and science of economy are nowadays supplemented by network theoretical approaches which are more suitable for analyzing the globalized world.¹⁰

For the establishment of dialogue between law and other forms of knowledge a strongly inter-disciplinary starting point is needed.¹¹ Today this means more than the application of the methods of sociology or discussion-analysis for a better understanding and overview of legal processes. The need to turn towards new (scientific) fields has been formulated, new fields which have not or have not really been in connection with the science of law or economy (science of literature¹² cultural anthropology¹³, or psychology and cognitive nerve sciences, etc.) before. Moreover, nowadays their relationship cannot be limited to ‘mutual introduction’ at the level of generalities, but the establishment of previously formed inter-disciplinary procedures and related coherent and systematic methods is necessary, which are able to provide a firm framework for material comparative analyses/research, and at the same time they are committed to flexibility and openness.¹⁴

¹⁰ Nagy Marianna, A közigazgatási felelősség – mi van a jogen túl? [Administrative responsibility – what is beyond law?] (n 1) 209.

¹¹ Richard Sherwin: *Intersections of Law and Culture*. A cross-disciplinary conference hosted by the Department of Comparative Literary and Cultural Studies, Franklin College Switzerland, Lugano, October 2, 2009.

¹² Law and literature is becoming a new discipline also in Hungary. It aims at revealing the (literature) context of legal phenomena. According to the simplest – and maybe most applied – scheme there are two specific approaches in the research field: the first one (is which) examines how law appears in literature (law in literature) while the other one treats law as a special field of literature (law as literature). H. Szilágyi István: Jog és irodalom [Law and literature] *Iustum Aequum Salutare* (2010) VI.(1) 5. (About this topic further see: Nagy Tamás: Jog, irodalom, intertextualitás. [Law, literature, intertextuality] In: Takács Péter (ed.): *Ratio Legis – Ratio Iuris. Ünnepi tanulmányok Tamás András tiszteletére 70. születésnapja alkalmából* [Ratio Legis – Ratio Iuris. Anniversary essays for the 70th birthday of András Tamás] Szent István Társulat, Budapest, 2011. 38–47., and Kiss Anna – Kiss Henriett – Tóth J. Zoltán (eds): *Csíny vagy bűn? [Freak or sin?]* COMPLEX Kiadó, Budapest, 2010.

In addition to the fact the ‘law in literature’ approach is closely related to the criticism of law (H. Szilágyi István op. cit. 6.) the picture of law in literature may be also used as source of legal history and the history of ideas. (H. Szilágyi István op. cit. 9.) Moreover – especially the works of modern novel literature – they may also serve as valuable sources for legal sociological research. In this latter discipline – based on the ‘living law’ concept of Ehrlich – the first works mentioning the possibility of this approach in the analysis of documents appeared in the 1970s. (H. Szilágyi István op. cit. 9–10.) Such analyses may provide valuable help for example in reviewing the ideas of society about civil/nonprofit actors. These ideas are still theoretical, substantial research regarding this context has not been performed in Hungary yet.

¹³ For details see e.g.: Freeman Michael – Napier, David: Law and Anthropology. *Current Legal Issues* (2009) 12, 40–47.

¹⁴ Jonathan Rothchild: Law, Religion, and Culture: The Function of System in Niklas Luhmann and Kathryn Tanner. *Journal of Law and Religion* (2008–2009) 24, 465–476.

1.4. Beyond multi- and interdisciplinarity: the new aspects of social studies

Modernity came with the introduction of new explanatory principles in political philosophy as well. The majority of authors discussing good government and the order of social coexistence also explained 'the human phenomenon' based on the ontological and epistemological presumptions of the Cartesian-Newtonian world view, that was dominant in the new age social sciences for a long time and all other approaches were declared irrational: the individual was considered to be the implicit starting point and atomic unit of social examinations.¹⁵ One way or another the *raison d'être* of political institutions was deduced from the authority given by and/or the natural endeavors attributed to the individuals. The historical heritage and the 'blind' forces of nature were taken into account as the obstacles to overcome the smooth evolution of the individual. The main political goal became emancipation, the liberation of the individual from these bounds, the main tool of which is purely rational power.¹⁶

Today's canon demands the society's researchers to clearly distinguish statements that contain facts or value judgements. The 'academic majority' tends to admit only the former to be rationally manageable, meaning to be real.¹⁷ The global expansion of rational institutions matured further huge changes by the end of the 20th century, for as much as in the [complex] operation of 'power of knowledge' embodied in networks, techniques and formalized relations (e.g. law, market, information technology) became more and more uncontrollable and distressing.¹⁸

It can be stated that social sciences are increasingly forced to start to examine the underlying meaning of things and the broader logical framework of the examined phenomenon more deeply besides or instead of descriptive questions that are inquisitive about operation. In an era of crisis, when everyday experience confutes our previous expectations, legal and political theory is radicalized as well: it has to examine and rethink the validity of its presumptions that were considered stable. 'This way philosophizing will gain civil rights again, as it is harder and harder to exclude such questions from the discussion of political theory, which has needs of describing professional science and is averse to philosophical questioning that are not related to the method of the operation, but to its sense (meaning the frames of interpretation)'.¹⁹ The attention of legal science, besides others, also turns more and more to the question of moral principles penetrating – more – into the world of law. One certain sign of this is that the forefronts of 'traditional' legal positivism create their own criteria systems one after another, which may allow this incorporation to happen justifiably.²⁰

¹⁵ Lányi András: Az ökológia mint politikai filozófia. [Ecology as political philosophy] *Politikatudományi Szemle* 2012/1. 105.

¹⁶ Ibid.

¹⁷ Lányi (n 15) 106.

¹⁸ Ibid. 107.

¹⁹ Ibid.

²⁰ Matthew H. Kramer: *Where Law and Morality Meet*. Cambridge University Press, 2008. 17.

As Marianna Nagy relevantly asks the question ‘why law is not working’ we have not received sufficient answer yet,²¹ from the traditional, ‘usual’ methods of the broadly interpreted economic science and the related – typically social scientific – fields. It is unavoidable to re-establish the philosophic synthesis between legal norm regulating public administration and the facts of the real operation. Probably this direction will/may be the basis and realizer of the change of paradigm (also) in Hungarian sciences (of public administration).

In general, it may be stated that due to the crises social sciences more and more shall start examining, instead of descriptive questions analyzing the ways of operation, the real meaning of things, the broader examination frameworks of the analyzed phenomena. In the era of crises, when everyday experiences falsify our expectations, legal and political sciences become more radical: (they will examine and revise the validity of their presumptions – which they have considered firm before). ‘Therefore philosophy has become valid again, as it is more and more difficult to exclude questions from political scientific [and economic scientific] discussions which are avert from philosophic questioning, appearing with the requirement of descriptive science which is not related to the method of operation, but to its meaning (the framework of meaning).’²² The attention of jurisprudence is turning – among others – to the issue of how it is possible that moral principles are present to a greater and greater extent in the world of law, also in a field where these have long been needed repeatedly, but the practical incorporation has not or just partly happened (see e.g. the issue of moral responsibility of the majority society towards the Roma minority in the legal instruments of Hungary). A definite sign of the expansion of the horizon of jurisprudence – interpreted in the broadest sense – is that the warriors of ‘traditional’ legal positivism keep establishing their own systems of criteria, through which this incorporation may probably take place in all possible fields.²³

2. The main objects of the present work, aims and antecedents

2.1. Introduction

It is almost impossible to explore all the aspects of the civil society, and there are many among these aspects that are not dealt with in the domestic literature either. Such an example is the *pro bono* legal work, which is rightly called the noblest public profession: despite the fact that this phenomenon is present in Hungary as well there are no works of scientific nature that would analyze the legislation and the emerging practice. Similarly, in the Hungarian literature – in comparison with the international literature – there are very few works discussing civil/nonprofit organizational culture extensively.

²¹ Nagy Marianna: A közigazgatási felelősség – mi van a jogon túl? [Administrative responsibility – what is beyond law?] (n 1) 207.

²² Lányi (n 15) 107.

²³ Kramer (n 20) 17.

This paper is primarily concerned with the description and examination of phenomena – related to issues belonging to the non-profit sector and the civil society – which appear directly in positive law as well. This – as has been stated earlier – of course, does not mean that besides the methods of jurisprudence we will not rely on the methods and findings of other social sciences too, but certain – objectively existing – social phenomena won't be analyzed in detail due to the lack of direct legal regulation. Thus, for example, social movements or even associations will be dealt with only if they choose a form of organization offered by the law.

This work, of course, cannot avoid the task of defining the contents of the most important concepts (non-governmental, non-profit, third sector, etc.), as they are used in general and in Central and Eastern Europe.

2.2. The scientific antecedents of the present work

What are the most important studies and works dealing with civil society and non-profit sector in Hungary?

Since the time of the transition several Hungarian authors (Kuti – Marschall [1991]²⁴; Kuti [1998]²⁵, Kondorosi [1998]²⁶, Csefkó – Horváth [1999]²⁷, Szabó [2000], Csegény – Kákai [2001]²⁸, Jagasics [2001]²⁹, Miszlivetz [2001]³⁰, Jagasics [2003]³¹, Kuti [2003]³²; Bartal

²⁴ Kuti Éva – Marschall Miklós (eds.): A harmadik szektor. [The third sector] Nonprofit Kutatócsoport Egyesület, Budapest, 1991.

²⁵ Kuti Éva: Hívjuk talán nonprofitnak... [Let's call it non-profit...] Nonprofit Kutatócsoport, Budapest, 1998.

²⁶ Kondorosi Ferenc: Civil társadalom Magyarországon. [Civil Society in Hungary] Politika + Kultúra Alapítvány, Budapest, 1998.

²⁷ Csefkó Ferenc – Horváth Csaba (eds.): Magyar és európai civil társadalom. [Hungarian and European Civil Society] Friedrich Ebert Alapítvány, Pécs, 1999.

²⁸ Csegény Péter – Kákai László (eds.): Köztes helyzet? A civil szervezetek és az önkormányzatok kapcsolatában. [Ambiguous situation. The relationship of civil societies and self government] Miniszterelnöki Hivatal Civil Kapcsolatok Főosztálya, Budapest, 2001.

²⁹ Jagasics Béla: A nonprofit szféra elmélete. [The Theory of Non-profit Sector] Nonprofit képzési füzetek. Nonprofit Szolgáltató Központ, Zalaegerszeg, 2001.

³⁰ Miszlivetz Ferenc: A civil társadalom nyomvonalai az új európai térben. [The Tracks of Civil Society in the New European] In: Miszlivetz Ferenc (ed.): Közép-Európa a kapuk előtt. [Central Europe in front of the Gates] Savaria University Press, Szombathely, 2001. 66.

³¹ Jagasics Béla: A közhasznúság, a közhasznú szervezetek, a közhasznú működés szabályai. [Code of conduct applicable for charitable and non-profit organizations] Nonprofit képzési füzetek. Nonprofit Szolgáltató Központ, Zalaegerszeg, 2003.

³² Kuti Éva: Kinek a pénze? Kinek a döntése? [Whose money? Whose decision?] Nonprofit Kutatócsoport, Budapest, 2003.

[2005]³³, Bíró [2005]³⁴; Rixer [2006]³⁵, Bíró [2010]³⁶; Bódi – Gécziné – Bárdosi – Kahulits – Kákai – Lakrovits – Lele [2012]³⁷) have dealt with the development of civil society and the role of civil society organisations. These studies have been of utmost importance, and have described the development of civil society as a dynamic and often changing process, where tendencies are only becoming visible lately, whereas civil society can be described as intensely flexible and changeable.³⁸

Relatively few large-scale domestic work has been written in English, and they often attempt to describe the bordering areas of civil/nonprofit topic. Traditionally, this includes the theme of the relationship between society and administration, or the issues related to the various mechanisms of consultation or advocacy.

There are many works dealing with the presentation of a civil or non-profit institution / organization from the aspect of jurisprudential analysis (pl. Lomnici [2000]³⁹, Bíró [2002]⁴⁰; Bognár [2010]⁴¹, Csehi [2010]⁴²), some of them being comments on the topic (Rixer [2005]⁴³, Rixer [2007]⁴⁴, Sárközy [2004] or being specifically designed as a handbook for civil or non-profit organizations. (It is not uncommon that there are jurisprudential works which present mostly general proposals for the future, offering solutions not only to a certain problem but to the whole topic.) The most up-to-date mixtures of theoretical and practical knowledge are embodied in the notes, mostly elaborated for law students, or in the doctoral dissertations that include suggestions and directions for changes and development.

³³ Bartal Anna Mária: Nonprofit elméletek, modellek, trendek. [Non-profit theories, models and trends] Századvég Kiadó, Budapest, 2005.

³⁴ Dr. Bíró Endre: A K.C.R.- dimenzió. Jogi akadályok a közfeladat-ellátás civil részvétellel történő megvalósításában. [The K.C. R. Dimension. Legal Barriers to Civil Society Participation In The Implementation Of The Public-Service Mission.] EMLA Egyesület, Budapest, 2005.

³⁵ Rixer Ádám: Az állam és a civil társadalom kapcsolatának jogi aspektusai Magyarországon. [The Legal Aspects Of The Relationship Between The State And Civil Society In Hungary] Dphil. Thesis, KRE ÁJK DI, Budapest, 2006.

³⁶ Bíró Endre: Hol tartunk? A civil nonprofit szervezetek jogi szabályozásának problémái. [Where are we? Problems of legal regulation of civil non-profit organizations] Jogismeret Alapítvány, Budapest, 2010.

³⁷ Dr. Bódi György – Dr. Gécziné dr. Bárdosi Eszter – Kahulits Andrea – Dr. Kákai László – Dr. Lakrovits Elvira – Dr. Lele Zsófia: Változó civil világ. Kézikönyv civil szervezetek számára. [Civilian World in Change. Manual for NGOs.] COMPLEX, Budapest, 2012.

³⁸ Nóra Sasvári: Civil society organisations and the European Union – CSO interest representation. Dphil. Thesis, EXCERPT. Corvinus University, Budapest, 2009. 8.

³⁹ Dr. Lomnici Zoltán: Az alapítványok és a közalapítványok. [Foundations and public foundations] HVG-ORAC, Budapest, 2000.

⁴⁰ Bíró Endre: Nonprofit szektor analízis. [Nonprofit sector analysis] NOSZA projekt, EMLA Egyesület, Budapest, 2002.

⁴¹ Bognár Piroska: A nonprofit gazdasági társaságok. [The non-profit companies] HVG-ORAC, Budapest, 2010.

⁴² Csehi Zoltán: A civil társadalom szervezeteinek joga Magyarországon. [Legal Provisions for Civil Society in Hungary] Gondolat, Budapest, 2007.

⁴³ Rixer Ádám: A közhasznú szervezetekről szóló 1997. évi CLVI. törvény: Kommentár. [Act CLVI of 1997 on Non-profit Organizations: Commentary] Magyar Hivatalos Közlönykiadó, Budapest, 2005. 224 p.

⁴⁴ Rixer Ádám: A közhasznú szervezetekről szóló törvény kommentárja. [The Commentary of the Act on Non-Profit Organizations] Magyar Hivatalos Közlönykiadó, Budapest, 2007. 235 p.

There is a large collection of works written – at least partly – by foreign researchers in regards to Hungarian civil society (A. Arató – J. Cohen [1989], Seligman [1992], Seligman [1997]⁴⁵) that present theoretical approach, or introduce countries as case-studies. Among the sciences dealing with civil/non-profit law, and civil society/non-profit sector the particularly relevant are those works which – partly due to their language (typically English or German) and partly to the internationally interpretable concepts and phenomena – permit the international comparability or even themselves perform this comparative analysis.

Following the transition, international researches and analyses have also included Central European countries and the development of civil society in them. Out of those researches it is important to mention the Comparative Non-profit Sector Project carried out by the John Hopkins University of Baltimore, USA, in which – in both research periods (1995, 2003) – Hungary was involved as the only Central European country in the first phase.⁴⁶ The project aimed to make an attempt on global level to examine the dimension and structure of the sector (Salamon – Sokolowski – List [2003]), and it summarized the common characteristics that describe the organizations of the ‘non-profit’, the ‘voluntary’, the ‘civil’, the ‘third’ or the ‘independent’ sector, and it also established the structural-operational definition of the sector.⁴⁷

In order to be able to evaluate the strength and quality of civil society in any given region, it is helpful – if not crucial – to begin with a larger comparative perspective. In the *Weakness of Civil Society in Post-Communist Europe*, Marc Morjé Howard provides an empirical baseline that shows that post-communist citizens have extremely low levels of membership and participation in voluntary organizations.⁴⁸

As the comparative study of civil society continues to grow and expand, and as more scholars develop empirical indices to measure the strength of both civil society and democracy, the concept of civil society will continue to be applied to a wide array of countries and contexts – perhaps with mixed results for those concerned with systematic and meaningful comparisons.⁴⁹

Due to its instructive results we must point out to the international comparative research that took place between 2008 and 2011 including seven countries (Poland, the Czech Republic, Slovakia, Slovenia, Hungary, Bulgaria and Romania), which examined the social embeddedness of NGOs (the research work was entitled “Has our Dream Come True?”). The research chose as an indicator the lobbyist function of the NGOs, and to measure their

⁴⁵ Adam B. Seligman: *A civil társadalom eszméje*. [The idea of civil society] Kávé Kiadó, Budapest, 1997.

⁴⁶ See, for example: Lester M. Salamon – Helmut K. Anheier: *Social origins of civil society: Explaining the nonprofit sector cross-nationally*, Working Papers of the Johns Hopkins Comparative Nonprofit Sector Project. No.22. The Johns Hopkins University, Baltimore, 1996.; furthermore Lester M. Salamon – Helmut K. Anheier: *Szektor születik*. [A sector is born] Nonprofit Kutatócsoport, Budapest, 1995., and Lester M. Salamon – Helmut K. Anheier: *Szektor születik II. Összefoglaló egy nemzetközi nonprofit kutatás második szakaszáról*. [A sector is born II. Summary of an international research on non-profit sector] Civitalis Egyesület, Budapest, 1999.

⁴⁷ Sasvári (n) 7.

⁴⁸ Marc Morjé Howard: *Civil Society in Post-Communist Europe*. In: Michael Edwards (ed.): *The Oxford Handbook of Civil Society*. Oxford University Press, 2011. 135.; and Marc Morjé Howard: *The Weakness of Civil Society in Post-Communist Europe*. Cambridge University Press, 2003.

⁴⁹ Ibid. 143.

social embeddedness, it used both quantitative (survey) and qualitative (focus groups, interviews) tools.

According to findings included in the research report, the open problems related to the civil society in Hungary appear primarily as historical, sociological and socio-psychological issues, while the laws and regulations governing civil society respect international standards: the legal environment is highly developed, the rights are provided and institutions are established. The report highlights the threats of the analysis solely based on the examination of the domestic legal documents mentioned above. ‘However, [in relation to the contents of the legislation], practice shows a different picture: in addition to the intense self-organization the Hungarian civil society is characterized by an accentuated dependence on the state, the low level of institutional trust, the weakness of channels suitable for lobby, and the low level of participation in decision making processes. In particular, civil control and influence is low, the large number of civil society organizations does not provide adequate social participation.’

There are foreign language studies which, in spite of their comprehensive character, almost totally lack Hungarian data, yet these works are widely referred to in the domestic scientific research.

2.3. The main characteristic of the researches done on the development of the civil society

One of the most important pre-test questions of the scientific researches regarding the non-profit sphere and civil society in its broadest sense is the way in which the concept of civil society is defined. In this regard we can witness the reproduction of the differences (detachment) manifested in the international literature. In respect of domestic authors we can distinguish the so-called generalists and the minimalists, the former group operating with a broader conceptual system (Gellner, Walzer, Diamond), and considering that civil society can be defined by social and political institutions like the limited and accountable public authority or the public, etc.. According to them, a form of behavior and its appearance in the society is called civil society. According to this conception, civil society is a social formation that allows collective action, and provides the freedom to exercise rights, and to self-organize. This category is almost inclined to normativity and it assumes latently a commitment to certain values, meaning that according to this perspective, civil society is actually a kind of political culture.

In contrast to this perspective, the minimalists (Habermas, Cohen and Reaping, Keane, Solomon, Giddens) narrow the concept defining the civil society as a particular totality of civil organizations and movements and consider it as a separate sphere of the society – specifically, the section of non-governmental and non-economic institutions. The latter approach improves – of course – significantly the possibility of research having jurisprudential nature.

While there is no doubt that – just as Nagy and Maruzsa also referred to – the two approaches can be easily merged in the process of describing a society in which all civil activities and initiatives transform into a certain kind of cooperation, the traditional characteristics of the Hungarian society also justify the existence of these two approaches,

and scientific visions, which thus can be defined as a coexistent double vision. In fact, the Hungarian experience shows that in a politically inhibited context the existing civil nature activity cannot become institutionalized (some movements in the era of state socialism) and that in spite of the large number of NGOs the real concept of civilian culture and everyday civilian life cannot be created (the situation of Hungary in the post-1989 period).

In spite of the fact that amongst the most significant domestic works, which for example deal with the formation of the non-profit sector, one may find papers which make reference only to foreign literature, most authors agree that the international theories cannot be applied (or can be applied to a limited extent) for the description of the development and operation of the non-profit sector in Hungary.

It must be indicated already at this point that one of the most serious difficulties the researches on Hungarian civil society/non-profit sector have to deal with is that the data that these researches are based on are not reliable enough – despite the fact that the Hungarian Central Statistical Office (HCSO) publishes independent volumes of the data regarding civil/non-profit sector. To illustrate the above statement let us take one example: according to the results of the census of 2011, in Hungary there are 315.583 people who declare themselves Gypsies. In contradiction to this data, the civil organizations dealing with the problems of Gypsy communities state that the number of Gypsies is twice or twice and half larger than the recorded number.

The differences in the definitions themselves could be enough to steer the assessments concerning the size of the nonprofit sector in different directions. Another reason for the differences may lie in the fact that data on the number of nonprofit organizations are available from several registers that are actually independent of each other. These registers differ in their aims, content, operational principles and maintenance rules. This situation was only partially improved by the changes that have occurred since 2011.

2.3.1. The effect of the civil/nonprofit sciences on the itemized regulations and the practice of governmental bodies

The so-called professional substantiation of real civil/nonprofit entities with legal personality established within the transition in Hungary started in the 1980s with empirical and deductive, descriptive and comparative research and modelling, and in the past twenty years there have been several significant programs for the elaboration of which working teams of theoretical and practical experts were set up. However, regarding these we may generally state that in the later phases of legislation, at the ministries or at the Parliament the results of these working groups were not built into the finalized form of the draft text, or only in a much fragmented way.

The fragmentation of the relationship of sciences and ‘living law’ is also caused by the fact that legislative impact studies – either preliminary or subsequent analyses – are very rarely added to the detailed legal provisions. However, it is also a fact that by the time anyone could start such subsequent impact study, the given legal instrument is – often – not in effect any more due to the ‘revolutionary’ intensity of modification of laws in Hungary.⁵⁰

⁵⁰ For details see: Ádám Rixer: *Features of the Hungarian Legal System after 2010*. Patrocinium, Budapest, 2010. 118–119.

All in all, it may be stated that there is a relationship between the results of the civil/nonprofit sciences and the content of legislative products, but it is not unconditional and consistent.

It is clear that only the results of those researchers or workshops dealing with the civil/non-profit sector in Hungary reach the ‘stimulus threshold’ of the current legislative which are permanently present and from time to time come out with results and suggestions. The Civil Partnership Program of the Ökotárs Foundation has been monitoring the development of the legal and regulatory environment of the civil sector in Hungary for the last 10 year, making even suggestions to the legislature to improve it.

The picture would not be complete if we did not add to the above mentioned facts that some of the characteristics and tendencies of the researches on the civil/nonprofit sector in Hungary are ‘running in parallel’ with the features of the domestic civil society: such as the heavy dependence of the civil/non-profit sector on politics, the consequence of which is that politics is often peculiarly reproduced in the researches, due to the fact that in the process of financing and judging these researches the ‘political affiliation’ of the researchers and workshops is more important than the quality of their scientific results.

3. General characteristics of civil/non-profit law

3.1. Types of regulations on civil/non-profit sector

The functioning of a society can be described by the formal phenomenon of inhesion. This formalization is displayed in the system of norms based on which the society is organized. Such system of norms are: law, morality, customs and religion. Among them, law is the one ‘that – in our days – has the strongest level of formalization and formal binding force.’ The grouping of the norms that is the most widely used and most useful for our topic is the grouping according to the normativity ‘class’. According to this, the following type of norms can be separated:

- Substantive and individual norms
- Community norms
- Association norms
- Social norms

The norms of society according to their validity are made up of mandatory and functional norms of the above structures. The community in this approach is not the society. It can be perceived as a smaller subsystem integrated into society. It is not necessarily linked to any society, and it may be the subsystem of more than one society. Community in the normative sense of the word can be of many kinds. Some international civil movements are considered part of this community. The significance of the organization (*societas*, *organisation*) is that it sets out a framework for any kind of human association founded for the attainment of a common goal. A wide range of organizations exist within a society, and these can be grouped in several types and subtypes. An organization is not a community (*communitas*), but an association (*societas*). A community can be born into it, while the

regularity of an association is based on the idea of the contract. An organization is maintained by the performance of its members. In the organizations normativeness prevails, which is mainly related to a common purpose, and in most cases takes the form of regulations or a contract. The social norm in the present context means that it is valid for the whole society, and in this sense the individual, community and organizational norms are not 'social norms' at all. This general validity may almost exclusively be achieved through the intervention of the state. Thus the law and the norms of state politics can be, as well, defined as social norms.

If the general content is considered, the individual norms, morality, community norms and customs in certain contexts may be considered to fall within the scope of the politics. The organizational norms, by contrast, are the 'specific rules for appropriate behavior.'

The law is positioned above all the social norms – due to its general validity (generally binding nature) – and it is above all the structures that are the components of the society. Its 'power' comes from its enforceability position, the loss of this position makes it invalid.

The above division – according to types or classes – is not exclusive, however, it should be emphasized that we may speak about the coherence and strong interrelation of the 'different levels of norms', since the individual norms (e.g., a sense of solidarity) give birth to and create community norm, which in appropriate conditions progresses into organizational norm (e.g., the internal norms and regulations of the association), which, in the long term, establishes the need for universal normativeness becoming law.

The general validity of law is established by its 'mid-scale nature', and – compared to other systems of norms – by its 'average' character. This system of 'mid-scale nature' has obtained interoperability with other systems of norms. In a modern society there is only one real mid-scale which is definitely conceivable along some kind of consensus. The draft of a legal norm can be contested without any formal constraints, in contrast to a validly established legal norm that may be impugned only within the framework of a highly formalized process.

3.2. The role of law in the civil/non-profit social subsystem

The system maintenance function of law basically means its capacity to maintain in the social subsystems – e.g. in the civil sphere – the relations existent in the community (primarily power relations) through the strengthening of the existing relationships.

The legal system existing in society can be conceived as a separate functional system, that has its own operations by which it always executes the self-reproduction (autopoiesis) of the social system.. Law – just as all self-reproducing systems – 'is highly dependent on the environment and this dependence grows due to the artificial character of the functional differentiation of the social system.' On the other hand, law as a closed system – on the plane of its operations – is completely independent. Only a generally accepted legal institution is able to show what is right and what is abuse. The legal system can develop the 'sensitivity to react' before social interests only as a self-referential closed system (and this is – obviously – especially true for non-profit law). Law governs (civil) society by regulating itself.

The legal system focusing its attention on the conflicts, by the means of its own detecting tools (such as the differentiation of legitimate/illegitimate practices, the use of dogmatic concepts etc.) scans the social environment, and molds these conflicts within its own operating system in a process through regulations and dogmas. In addition we may say oversimplifying that in the legislation process establishing the laws applicable to the non-profit sector there is a ‘natural selection process’ of the relevant information, which is then transformed into mandatory acts.

The intrusion of law in the civil sector should be seen as two independent, self-contained communication systems mutually observing each other without the possibility of creating a direct link between them. Law ‘invents’ an image of the civil sector, and formulates its rules in concordance with this image. The civil ‘sector’ ‘invents’ an image of law, and conducts its operational processes in accordance with this image. Information and interference are thus the two mechanisms which provide the elementary principle of the openness of closed social systems.

3.2.1. The possible direction of legislation

According to some approaches, the legislation in the studied area ‘is made up of three major categories’: on the one hand it includes provisions for the independent existence of the civil, non-profit sector, on the other hand it regulates the relationship of the civil/non-profit sector and the government, and finally it settles the rules for the civil/non-profit and private sectors that have regulatory effects for both the individuals and the economic sector. The separation of the first two areas is entirely hypothetical, since, although it is possible that civil society makes rules for its own functioning (e.g., establishing a national civil advocacy), but to transform these rules in mandatory acts, the contribution of the legislator is also necessary, this latter having the role of defining the limits of the two sectors and to specify their relationship. Similarly, legislation on public benefit organizations or even volunteering – despite their role and character of promoting the formation of the ‘independent civil sector’ – makes provisions (under the form of a sophisticated and complex system) regarding the implementation of public targets that are fulfilled by the NGOs but supported and controlled (managed) by the government. In the Hungarian legislation practice the preliminary impact assessment and the prognosis based on detailed data regarding the social and other consequences of a certain law or act, hardly exist. The involvement of civilians in this activity represents an important potential, just as their involvement in the post-impact assessment of laws.

3.2.2. The main features of the regulation of civil society/non-profit sector

- a) While the legislation applied for the construction and operation of the state (of the government agencies) – including material, organizational and procedural laws – is typically mandatory, and the one applicable for the economy (in addition to the cogent ‘frameworks’) has dispositive rules as well (allowing the application of different provisions but if such provisions don’t exist conferring binding force to the existing laws), provisions regarding the ‘non-profit sector’ are meant to regulate the status

(foundation, terminating) or the management of the civil organizations, and do hardly contain regulations regarding the content and rules of professional conduct or of the operation. The autonomy of the civil/non-profit sector leads to this situation.

- b) We will have a better understanding of the essence of this problematic issue if we approach the examined topic according to the structure of the legal norm. Thus, among non-profit laws we can distinguish norms that have the typical structure of a norm, task assigning norms and / or recommending substantive norms. The latter ones are usually issued to call attention and have guiding character often with only informative purposes. Strictly interpreted they often lack 'law'. In practice, what is kept in mind is the development of a coordinated and integrated action, without forcing the recipients to have a certain conduct or attitude. These 'guiding rules' are meant to be norms for economic operators, but the development of the civil society led to the spread of this kind of norms in this domain, too. At the same time, it is once again highlighted that the legal nature of a substantial part of non-profit law – as we shall see later – is highly questionable.

One of the essential features (and sometimes a problem) related to the stability of non-profit law is the soft law and *lex imperfecta* character, that questions the legal nature of the norm because it lacks the 'innermost core' of the law which is enforceability besides political impeachment. The lack or the contingency of enforceability – in a broad and general sense – raises a number of specific questions related to the problem of the effectiveness of nonprofit regulation. It should be clear that some institutions holding fundamental 'civil' functions and mechanisms cannot be formally considered legal institutions.

- c) If you cannot distinguish the actual processes of social change from those cases where the change occurs in law, a situation may easily emerge in which the change of law reflects the transformation of the society or means the social change itself. Due to the complexity of modern societies, constant adaptation has become a necessity, and the adaptation often led to social changes. Therefore, a social mechanism is evolving that transforms the change into an 'independent industry', and fetishizes it as an independent necessity. The industry of change is built into the system maintaining mechanisms, more precisely, the state as a maintenance system will become a constituent of the industry of change. System maintenance now appears as a change. This affects law, as well.

A significant part of the changes occurring in law is only a fiction if regarded from the perspective of social changes: it shows law and the state changing, when in reality almost nothing happens. Moreover, provided that 'law is the path of institutional change', the change itself will be a selective process determined by the system, and it is not society that is changing in this process, but the (partially recognized) adaptation options that are inherent in the system.

- d) New types of norms

Among the large and growing number of monitoring, influencing and mediating relations between society and the state, civil society and public organizations, it is increasing the role of the joint – thus partly social and partly public formations

– and of the so-called para- or quasi-governmental and legal categories. There are lots of scenes for the gratification of public needs, where ‘self-management, self-organization and self-monitoring’ based on internal capabilities are more effective than state bureaucracy, and for the successful completion of these, the state gives certain powers to certain communities, bodies or organizations. In particular, it is in the broad and diverse network of the public autonomies where social and public sectors are linked.

The new layer of law plays a role of growing importance which is made up of the normative specifications and mandatory regulations applicable for the members of public bodies and public institutions. These are norms having partly social and partly legal nature, and may be defined as mixed, or transitional para legal norms.

We may observe the wide expansion of delegated lawmaking, self-regulation and co-regulation of players, various ADR techniques⁵¹ obviously burst the ‘traditional’ and closed system of rules and values.⁵² Moreover, the ADR techniques push conflicts partly over the territory of traditional law and legal equality.

da) Application of suitable norm types in the regulation of life situations

It shall be stressed that the use of legal acts is justified only if there is no more efficient tool for regulating life.⁵³ This means that in those fields in which life conditions may be regulated by self-regulation or co-regulation, ‘withdrawal’ may be reasonable – trusting the regulation of life to other forms of normatives (morals, religion, customs, etc.) instead of or in addition to the rules of law.

The technique of self-regulation is spreading in several fields. For example, for increasing consumers’ trust, strengthening a client-centered market, facilitating the grounded decision-making of consumers, and in order to make services more transparent, agreements formulating responsible service provider behavior – concluded within market self-regulation – are getting more significant. Primarily the institutions and professional interest representative organizations concerned participate in the establishment of agreements, or in other words codes of conduct, concluded within self-regulation (or unilateral undertakings). There are some fields of administration in which self-regulation is dominant (e.g. in sport administration⁵⁴) contrary to state administration.

⁵¹ ADR (Alternative Dispute Resolution) is the overall name of dispute resolution processes that the parties use voluntarily – considering the nature of the conflict – before or instead of taking the dispute to court. ADR techniques have always existed, even though they were not called this; Hungarian legal history offers many examples for various negotiation-redemption compositions as well (e.g. the Decretum maius of Mathias Rex allowed the agreement of the convicted and the plaintiff-accuser-victim and so the redemption of the imposed punishment.) The name of ADR may be new, but its content can be considered “traditional”.

⁵² Balkin, J. M.: “What is Postmodern Constitutionalism?” *Michigan Law Review* (1992) 90, 1966.

⁵³ Dr. Gyergyák Ferenc – Dr. Kiss László: Általános jogalkotási ismeretek. Tankönyv a köztisztviselők továbbképzéséhez. [General legislative studies. Textbook for the education of civil servants.] KSzSzk KK, Budapest, 2007. 207.

⁵⁴ Sports have significant amount of regulations in each branches of sports approved by each specific sports association, and the law established by the state – compared to these norms – is just ‘supplementary’.

Regarding the notion of co-regulation it shall be mentioned that it is a rather new ‘set of legal institutions’. It is important that the White Paper on European Governance published by the European Commission mentions co-regulation as an example of better and faster regulation.⁵⁵

Co-regulation – regardless of its field – builds on the cooperation of state, market and other players, and contains a mix of legal and non-legal elements, focusing on the previous ones only if the latter ones cannot achieve alone the set target: co-regulating systems are usually based on self-regulation, the results of which are continuously supervised, and if necessary corrected by the state.⁵⁶ The main aim of co-regulation is to channel and ‘use’ the activities of self-regulating organisations – usually beyond substantive law – into public power procedure.⁵⁷

During co-regulation public power – normatively – sets achievable targets and self-regulation fills these with content. Co-regulation makes it possible to transfer the goals set by the legislator to interest representative organizations acknowledged at the given field (‘regulated self-regulation’), thus facilitating the channeling of self-regulatory initiatives.⁵⁸

This way of regulation is common mainly regarding different industries and service areas, but it may also be possible to introduce and use its forming set of tools in other areas. For example, in Hungary it would be extremely important to establish cooperation partly for co-regulation with cultural, educational, social and other service provider organizations, as well as with those cooperating in the identification, presentation and representation of Roma (Gypsy) interests.⁵⁹ However, the differentiation of the notions of co-regulation and co-decision seems to be unavoidable in this area, and also regardless of it.⁶⁰

db) About the relationship of legal and other types of norms

Values are the guiding principles, decisive in day to day behaviors and also in critical life situations. ‘Values are regarded desirable, important and held in high esteem by a particular society in which a person lives.’⁶¹ Nowadays or more accurately: in the last few decades Hungarian citizens are faced with confusion, delays and discontinuity concerning moral questions.⁶² Unfortunately, many

For details see: Princzinger Péter: Sportjog I. [Sports law I.] ELTE Eötvös Kiadó, Budapest, 2010. 33.

⁵⁵ Csink Lóránt – Mayer Annamária: Variációk a szabályozásra. [Alternatives to regulation] Médiautódományi Intézet, Budapest, 2012. 62.

⁵⁶ Ibid. 63.

⁵⁷ Ibid. 66.

⁵⁸ Ibid. 62.

⁵⁹ Rixer Ádám: A roma érdekek megjelenítése a jogalkotásban. [Presentation of Roma interests in legislation] Patrocinium, Budapest, 2013. 155–159.

⁶⁰ Ibid. 159–163.

⁶¹ Naraginti Reddy: *Importance of Moral Values in the Present day Situation*. <http://ezinepapers.com/?Importance-of-Moral-Values-in-the-Present-day-Situation&id=382706> >accessed January 23 2009.

⁶² In his ‘Öszöd speech’ delivered on 26 May 2006, Ferenc Gyurcsány (Hungarian Prime Minister 2004–) said the following: ‘It is obvious that we have lied throughout the past 18 months to two years. It’s clear

reasonable rules of political etiquette have not been created, which means that minimal consensus on several consequences of conduct in politics has not been reached, yet. Many authors dealing with the issues mentioned above emphasize that moral values and principles should be taken into account more seriously when political or social decisions are made.

Within the scope of examining Hungarian legal system, we shall consider that the substantive (thorough) analysis of different – material, procedural or organization-type – legal norms is limited by the fact that those parallel social norms which would support the moral, ethical foundation and continuous confirmation of the former ones, and which at the same time could precisely determine the direction, feature and depth of possible needs for change are often missing.

A repeated pattern of this work is that not only our science dealing with civil/nonprofit issues, but also our civil/nonprofit sector (sphere) is mainly of legal character, which means that the need for the appearance (and description) of different principles is basically (primarily and often exclusively) specified in legislation: the need for being influenced by other norm systems and its establishment may be considered rather low level. It results from this feature that regarding certain fields, the less consequent and sometimes clearly inconsistent regulation proves the lack of long term principles.⁶³ Some areas ‘traditionally’ belong to the group in which the eventuality of short term principles is shown in the permanent change of laws (e.g. regulation on religious associations) or in the fact of keeping regulations ‘at a low level of the hierarchy of laws’, a good example of which is the legal material about different (civil) organizations with recommending, opinion forming and consultative roles.

For the post-2010 Hungarian government it is (was) extremely important – especially due to the extreme rate of legal changes – to place its legislation on firm, ‘incontestable’ – let us state it: moral – grounds, including Fundamental Law. It must be also stated that it would be a mistake to view the analysis of different fields of authority (policies) merely as issues of legal regulation. In social fields regulated by law the material presence of other type (level) of normativity is necessary; from the general rules of social behavior to the question of special responsibility relationships settled by political etiquette. The well-established law does not abolish the justification of individual norms, community norms and organizational norms,⁶⁴ because the generality of law may only exist ‘through’

that what we said wasn’t true. We have already surpassed the opportunities available to this country by so much that we could never have imagined that this could be done under the joint government of the Hungarian Socialist Party and the liberals. And in the meanwhile we did absolutely nothing for four years. Nothing. You cannot name any significant government measure that we can be proud of except pulling our administration out of shit at the end. Nothing.’

⁶³ Linder Viktória: Személyzeti politika – humánstratégia a közigazgatásban. Ph.D. értekezés tézisei. [HR policy – HR strategy in public administration. Theses of Ph.D. dissertation.] Debreceni Egyetem Állam- és Jogtudományi Doktori Iskola, Debrecen, 2010. 13.

⁶⁴ Especially not the mixture of morals and politics, the convention. (see Szigeti Péter – Takács Péter:

(via) these.⁶⁵ Moreover, the failure of the previous lobby-act⁶⁶ showed that in certain fields the state must not intervene even in lack of self-regulation with its substitute provisions: in some social sectors permanent result may be reached only through the permanent stimulation of self-regulating mechanisms, which is a slow, circumstantial solution, but it is without any other alternatives. This is why the new lobby regulation chooses – partly – the solution that it creates compulsory rules only on the side of the public servant visited by the lobbyist, otherwise it settles for that on the one hand creating patterns upon its own forming practice, and, on the other hand trusting the already established criminal law limits (e.g. bribery, etc.). It also results from this that when we analyze the nature of law we shall assess how the listed norm types differ from law, in what relationship they are with law, and how much the practical applicability of law depends on the existence and establishment of other systems of rules.⁶⁷

3.3. Conclusion

Regarding the relationship between law and social norms, the question is often formulated whether the two sectors are the alternatives of each other or they are complementary.

The link between law and social norms is realized by two basically typical connection modes:

- Law does not affect the specific living conditions, social phenomena and practices, like for example propriety, intimacy, or even some aspects of civic altruism. The lack of regulation may be seen as a conscious self-control, but we see examples in Hungary, that the social norms are growing above the law resulting in either in:
 - a) the ‘breakdown’ or the real ‘reconstruction’ of the limits having a legal nature (this is rare), for example the law on lobby or
 - b) acting against the force of law to prevent their actual use (voluntary work).
- Law substantially affects certain social aspirations, setting out their framework, conditions, and consequences. In many cases the reason of the regulation is not only the intent to institutionalize the acceptable and desirable behaviors, but also the will to reduce and to control the negative phenomena.

A jogállamiság jogelmélete. [Legal theory of the state of the rule of law] Napvilág Kiadó, Budapest, 1998. 117.

⁶⁵ Tamás András: A közigazgatási jog elmélete. [Theory of public administration law] Szent István Társulat, Budapest, 2001. 145.

⁶⁶ Act XLIX of 2006 on lobby activities was annulled in December 2010.

⁶⁷ ‘The Nature of Law’ in Stanford Encyclopedia of Philosophy, <http://www.google.hu/searchsourceid=navclient&hl=hu&ie=UTF&rlz=IT4PCTC_huHU374HU375&q=An+Outline+of+Contemporary+Legal+Thought>accessed January 4 2007

Regarding overregulation, one of the main difficulties is that in several cases listed above the legislator did not assess properly whether legal norm or some kind of other social norm could have been the most suitable for influencing the given relationship. Namely, finding the most suitable type of norms for regulating the given relationship meant and means today one of the most problematic legislative contexts. The failure of the previous legal tools has been most apparent on fields influencing financial and economic relationships: e.g. the previous ‘Lobby Act’ and the ‘Voluntary Act’⁶⁸ aiming at suppressing black work may be mentioned as deterrent examples. Even though these are (were) part of the legal system formally, they have never been really used.⁶⁹

⁶⁸ Act LXXXVIII of 2005 on voluntary activities for public interest.

⁶⁹ According to the statistical data of the Office of the Parliament, for example, the number of lobby events formally reported under the Lobby Act (Act XLIX of 2000 on lobby activities) was 20–25 (!) in a quarter of a year, which is only a fragment of those which may have been realized as lobby activities. The fate of rules prescribing the reporting of volunteers is similar, the number of reported cases may be measured in per mil (!) compared to the actually realized voluntary activities [according to paper 11 paragraph (1) the host organization shall report it in advance to the minister responsible for the development of social and civil relationships on the Reporting form attached to the act].

Part II

GENERAL AND LEGAL MEANING OF CIVIL SOCIETY IN HUNGARY FROM THE BEGINNING TILL 1989

1. Introduction

The basic interest of each human community is that its members should be governed not only by the liberal principle of ‘refrain from doing what you would not want to be done to’ but also by the active, altruist moral principle of ‘do what you would want to be done to you’⁷⁰. ‘This interest of the community is transmitted to the individual by a large set of religious rules and social norms. At the time of the establishment of the individual state in Hungary some institutions appeared, which may be considered the predecessors of the present non-profit organisations, moreover, also the roots of the cooperation may be observed which today is usually referred to as the division of work between the governmental and the non-profit sector. Prince Géza and King Stephen donated part of the land confiscated from rebel pagan leaders to the Catholic Church and to the religious orders invited to Hungary’.⁷¹ As László Kecskés presents⁷² this transfer of property was the exact predecessor of setting foundations later, because it fulfilled all requirements which shall be met if setting up a foundation today. The founder donated the money for permanent causes of public interest, it was not allowed to withdraw it, but the founder had the right to give instructions for using the revenues originating from the property. The tendency which ran through the medieval history of the Kingdom of Hungary is that the foundations were usually established for religious-educational purposes. Achieving these goals and the management of the property required the founding natural or legal entity to establish an organisation. These were usually schools, higher education institutions, which were supervised by the founder (or the legal person, usually clerical entity appointed by it). As the establishment of a foundation required approval by the king – in case of the Roman Catholic Church it resulted from the right of patronage – the foundations were also supervised by the king.⁷³

2. Relationship of the civil society and the Church

The role of churches (religious orders) was not only to spread Christian dogmas and through them beliefs, but also the support of those in need. According to the rules of the gospel, donation was a Christian obligation, either to – obviously religious – institutions, or to specific individuals in need. In addition to donations from the king, the religious orders

⁷⁰ Matthew’s Gospel 7:12.: “So whatever you wish that others would do to you, do also to them, for this is the Law and the Prophets.”. The Holy Bible. English Standard Version 1966.

⁷¹ Kuti (n 25) 18.

⁷² Kecskés László: Az alapítványi jog fejlődése. [Development of the law of foundations] *Magyar Jog* 1988/2. 110.

⁷³ Béli Gábor: Magyar jogtörténet. A tradicionális jog. [Hungarian legal history. Traditional law.] Dialóg Campus Kiadó, Budapest – Pécs, 1999. 55.

received lands, parts of land also from other secular persons who by donating these wished to contribute to the support of the most desperate. This means therefore that the secular power (the king), religious organisations and private donors cooperated – if sometimes not proportionately – in the management of social problems from the very beginning. ‘Along with monasteries several non-religious fraternities (*fratres conversi*) and brotherhoods were established. Their usual role was to take over the economic and charity tasks, cultivate the lands, operate inns and hospitals, and provide alms for the poor. From this it was only one more step to establish hospital brotherhoods independently from monasteries in an era when corporate spirit was in the air and made a long row of different organisations come into being for a variety of causes.’⁷⁴

In addition to fulfilling their original economic functions, the associations of craftsmen and the guilds also aimed at organising mutual assistance among their members as well as public services (performance of public tasks) which become necessary in the interests of the community.⁷⁵ Towns and their citizens – as soon as they found themselves strong enough – made attempts to transfer institutions which provide public services into town competence. Private donors establishing charity foundations trusted the management of foundations to the prestigious citizens or leaders of the city, or, if possible, to the town authority.

Institutions established in the way described above ‘were neither classic non-profit, nor classic public institutions, they rather represented something in the middle. By the favour of their founders they had some founding capital, their property was often increased with legacies and special donations (e.g. for the establishment of benefices), their operation was facilitated by smaller-larger private donations, but at the same time they also received support from the city.’⁷⁶

3. Civil society and its deadlock

Till the end of the 15th century the way of development of Hungarian economy and society (and thus of Hungarian charity institutions and voluntary organisations) was rather similar to the development which took place in other European countries. The central power found its allies in the citizens of towns against the power ambitions of landlords and the church, and in return for this support it provided privileges which facilitated the establishment of the ‘third order’ in Hungary.⁷⁷

In the 16th century the European development as a whole arrived to a critical point. The new form of division of work and the establishment of ‘European world economy’ pushed Eastern-European countries to the periphery. This was the point when Hungarian charity institutions and voluntary organisations also lost the way followed by the more developed

⁷⁴ Somogyi Zoltán: A középkori Magyarország szegényügye. [Poverty issues of medieval Hungary.] Stephaneum, Budapest, 1941. 20.

⁷⁵ Kuti (1998) (n 25) 20.

⁷⁶ Csizmadia Andor: A szociális gondoskodás változásai Magyarországon. [Changes of social care in Hungary] MTA Állam- és Jogtudományi Intézete, Budapest, 1977. 17.

⁷⁷ Kuti (1998) (n 25) 23.

countries of Europe to suffer all traumas and fight with all forced solutions which 'are still present in collective memory, form the community's answer given to challenges and indirectly also influence the attitude of today's non-profit organisations.'⁷⁸

The next two centuries, which were called by István Bibó the dead end of the development of Hungarian society made the self-organisation of society and the normal operation of self-activist organisations completely impossible. The Turkish invasion made the second villeinage permanent, stabilised the allegiance of noblemen and the gentry established (and strengthened) after the peasant revolt led by Dózsa. Social relationships became permanent, the development of towns stopped even in areas which were not under Turkish rule. Naturally, in lack of developed citizenry those voluntary organisations also remained vestigial which should have worked as the immune system of the society against external invasion and internal suppression. Those 'small circles of freedom' and citizens' self-activities, which in Western societies were motivators of development could not be established and operated.⁷⁹

This situation did not change significantly after the end of the Turkish rule, because the Habsburgs' policy rather held back the development of citizenry and the integration of society, instead of speeding it up. As the leading power of counter-reformation, Catholicism was made to be the official state religion again, by this not only paralysing Protestant churches, but also preventing Catholic Church from making its institutions into the starting points of voluntary organisations.⁸⁰ According to the regulation of the time valid for foundations in 1715 and 1723, the operation of the foundations was supervised and controlled by the ruler and the members of the governor-general (see later). However, the further Hungarian development of the life of foundations and associations was significantly held back, for a long time, by the unbalanced internal political situation and wars fought in the territory of the country.⁸¹

4. Civil renewal in Hungary. Expeditious organisations of the Enlightenment and the Reform Era

After they expelled the Turkish army and defeated the freedom fighters led by Rákóczi, the Habsburgs prepared for a longer stay in Hungary. During the reforms implemented in the first decades of the enlightened absolutism (introduction of a new tax system, regulation of the rights and obligations of villains, reform of education, social care and health care) their attention was also directed to charity and volunteer organisations.⁸² After examining

⁷⁸ Ibid.

⁷⁹ Ibid. 24.

⁸⁰ Ibid.

⁸¹ Bocz János: A non-profit szektor strukturális átalakulása Magyarországon. A magyar non-profit szektor az 1990-es évek elejétől a 2000-es évek közepéig. [Structural changes of the non-profit sector in Hungary. The Hungarian non-profit sector from the beginning of the 1990s till the middle of the 2000s.] Dphil. Thesis. Budapesti Corvinus Egyetem Szociológiai Doktori Iskola, Budapest, 2009. 119.

⁸² Kuti (1998) (n 25) 25.

the content of the *Corpus Iuris Hungarici* the public law status of the charitable foundations of the church seems to be obvious, which is fundamentally different from the division principle of the valid Constitution. The public law status of the time may be best traced back to the consistent application of the right of patronage according to act LXX of 1723, which reserved the supervisory rights over all charitable foundations to the king, and “the state authority could disregard from the supervision of the church charitable foundations” only upon Decree nr. 9555/1863 of the council of the Governor-General.⁸³ It has to be also mentioned that – much later – the *Codex Iuris Canonici* regulated the activities of charitable foundations (*pia fundatio*) in canons 1544–1551, which – among others – were established to perform holy acts, the usual form of which was the operation of hospitals, alms-houses, boarding schools and twilight homes.⁸⁴

Due to the destruction of majority of archive sources, there is information about foundations only from the 19th century. It is known from the research of Magdolna Balázs that in the majority of foundations in the 19th century the donator – just like today – set forth charity, educational, cultural or scientific goals and tried to establish their conditions in forms of donation of property or money.⁸⁵ Setting up foundations was motivated – in addition to charity and humanity – by belonging to a community and the intention of self-expression. For example, for women the charity provided opportunity for participation in public life and to increase social presence and acknowledgement. It is also important that setting up a foundation or making contribution to a foundation – unlike the present practice – did not result in any material gain in any sense, it did not reduce the public debts or tax with the value of donated assets or real estate. For example, charity foundations were primarily set up for establishing orphanages, care homes and alms-houses, but as time passed by their role – in line with the all-time social needs – was extended and transformed.

Reading societies established in the 1790s were practically societies with social policy goals, ‘political association in the program of which there were reading and culture, as tools for social transformation, and weapons for fight against Austrian colonisation’.⁸⁶ After the exposure and elimination of the Hungarian Jacobin movement not only reading societies were banned, but the closure of public libraries was also ordered. When in 1811–12 – some – libraries were reopened their activities were under strict control of the authorities, a dedicated decree of the emperor stated that the newly established libraries ‘may not be attached to either reading rooms or scientific societies’.⁸⁷

In the more relaxed political atmosphere of the Reform era (1825–1848) the voluntary association of citizens received new motivation too. Societies, reading clubs, casinos, and literary associations were an important basis for the reform movement aiming at the

⁸³ Szuromi Szabolcs: A kegyes alapítványok jogállása Magyarországon a korábbi és a hatályos egyházjog, valamint az állami egyházjogi normák tükrében. [Legal status of charitable foundations in Hungary with regard to the previous and valid church law and the state church law norms] *Jogtörténeti Szemle* 2004/1. 17.

⁸⁴ *Ibid.* 16

⁸⁵ Balázs Magdolna: Az alapítványi élet indulása Magyarországon. [The beginning of foundations in Hungary] *ESÉLY* 1991/1. 22–40.

⁸⁶ Kuti (1998) (n 25) 27.

⁸⁷ *Ibid.*

industrialisation of the country, the elimination of the feudal legal system and national independence. In addition to the goals of self-education and dialogue, several associations formulated other civil and national aims in their statutes which perfectly resembled 'the cultural, economic, educational and humanitarian directions of reform policy, such as the development of agriculture, industry and commerce, the sponsorship of arts, literature and theatre, the improvement of Hungarian language, the facilitation of urbanisation and civilisation, the enhancement of morality and good taste, the support of the poor, etc.'⁸⁸ Even though the leading force of the reform movement was represented by the nobility and the forming intellectual class, the social activity of lower social classes also increased. In addition to associations – composed of aristocracy and gentry – and casinos, the number of societies of civil society and workers also increased in the 1830–1840s, just like the number of 'low class casinos' and the voluntary organisations of peasants.⁸⁹

The large number of societies and clubs gave space to the citizens' activities, and in case of certain organisations the elements of community leisure time and political activity can hardly be separated from each other, subsequently. In the 1830s civilian activities became especially popular: 'Let us join together! This is the motto of our era, since it has been announced by honourable count István Széchenyi. (...) For a decade several organisations and associations have been formed almost every day for reaching all kinds of scientific, artistic, humanitarian and material goals, they join together people from all classes, as these associations are based solely on equality.'⁹⁰ More and more political groups were established, among them the Conversation Club in 1834. 'The special Reform era feature of Hungarian public life was the explosion of publicity.'⁹¹ As Pál Vasvári put it: 'And people, who want to shed light on the horizon under such circumstances, still meet.'⁹²

Among the associations (*collegia*) there were literature-art and scientific associations, such as the Kisfaludy Association established in 1836.⁹³ The Honi Iparvédegyelet (National Industry Protection Society) was officially established on 6 October 1844 upon the initiative of the nobility, but it gained significant influence also among citizens, craftsmen, guild workers and peasants. At the time of the general meeting held in November of the year following its establishment the Védegyelet was proud to have 138 regional organisations, which were real civil organisations.

Act XVIII of 1848 on the press establishing the freedom of press was the first to declare in Hungary that 'everyone shall be free to express and spread his thoughts freely through the press'.

In summary: the blooming of the life of associations was not only a side effect, but an organic element of the reform movement, too. It is not surprising, therefore, that after

⁸⁸ Ibid.

⁸⁹ Ibid. 28.

⁹⁰ Horváth Mihály: Polgárosodás, liberalizmus, függetlenségi harc. Válogatott írások. [Rising of the middle class, liberalism, freedom fight. Selected essays.] Gondolat Kiadó, Budapest, 1986. 25.

⁹¹ Mezey Barna: Magyar alkotmánytörténet. [Hungarian constitutional history] OSIRIS, Budapest, 1996. 199.

⁹² Vasvári Pál: Irányleszmék. [Guidelines] Magvető, Budapest, 1988. 24.

⁹³ Béli (n 73) 55.

defeating the revolution and freedom fight of 1848 the Habsburg court did all it could to dissolve or at least paralyse associations.⁹⁴

5. Charity and voluntary organisations from the start of absolutism till the end of World War II

Even though after the fall of the revolution of 1848/49 not all associations were banned, the majority were dissolved, threatened, or under constant persecution. A parallel should be drawn between these events, and those similar attitudes which may be observed after 1948, and in the period starting in 1957.

However, the majority of organisations established before 1848 survived this period and had the strength to restart its activities after shorter or longer breaks, moreover, despite all difficulties, new organisations were also established. Due to the order of November 1852, the blooming life of associations typical in the Reform era somewhat stopped, it was put under the supervision of authorities, in line with the principles of the given period. The number of casinos and reading societies, which were the most significant in Hungary, was approximately 180 just before 1848 in the territory of the present day Hungary. After the Compromise – differently from the statutory regulations of the hereditary provinces – the enforcement of the right to association was subject to the provisions of orders.⁹⁵ At the end of the 1870s approximately 230 casinos (with 25,000 members) and 460 reading clubs (with 31,000 members) operated in Hungary, while the total number of associations (without industrial and waterworks associations) reached 2,700, with membership of approximately 600,000.⁹⁶

After the Compromise of 1867 the development increased. It was further facilitated by the dissolution of guilds in 1872 (act VIII of 1872, with a more popular name, the “industry act”). The act itself referred to the practice that in the future craftsmen may continue cooperation within the profession, the representation of their interests and the organisation of social services in form of associations.

Moreover, it must not be forgotten that at this time civilian movements also had some nationalistic features. ‘With the constitutional reform of 1848 the gravity force of Hungarian nobility lifestyle was lost, the bonds which had attached nationalities to the Hungarian nation broke up, nationalities used freedom and equality received from the Hungarian nobility to influence foreign powers, and against the fraternity, and by the establishment of nationality civil classes the balance between nationality efforts and the new Hungarian state was lost’ – wrote Imre Mikó.⁹⁷

⁹⁴ Kuti (1998) (n 25) 29.

⁹⁵ Gyáni Gábor – Kövér György: Magyarország társadalomtörténete. [Hungary’s social history] OSIRIS Kiadó, Budapest, 2003. 106.

⁹⁶ Ibid.

⁹⁷ Mikó Imre: Nemzetiségi jog és nemzetiségi politika. [Nationality law and nationality politics] Minerva Kiadó, Kolozsvár. 1944. 39.

In the examined period the main factors of the support of the poor were social charity societies; in the first years of the 20th century approximately 300–400 societies managed public subsidies. Among religious organisations the Catholic Social Mission Association established in 1908, the Reformed Lórántffy Zsuzsanna Society established in 1891 and several Israelite women's associations shall be mentioned. The role of secular organisations must not be forgotten either, for example the Hungarian Society of the Red Cross (1879) or the Budapest General Public Donation Association (1908).

The relationship of the state to non-profit organisations was controversial, which was shown also in the legal regulations. Even though a set of acts and orders (such as Act V of 1878 on felonies and misdemeanours, Act XV of 1883 on the budget of counties, Act XXI of 1886 on local authorities, Act X of 1909 on income tax, and Decrees nr. 9555/1863, nr. 16031/1886, nr. 16784/1900 and nr. 10271/1924) contained regulations which stipulated the establishment, operation, registration and governmental supervision of foundations and public foundations, these legal regulations somehow did not form a complete system of laws.⁹⁸ Their enforcement was insufficient and partial, and the majority of the organisations managing foundations did not operate in compliance with law. In the whole period only one draft act was prepared (in 1928) which could have resulted in comprehensive regulation, but this never entered into force.⁹⁹

The legal regulation of societies was much stricter. According to decree nr. 1873/1394 the official approval had to be acquired for the founding document of the newly established organisations, and operation could start only after the arrival of the approval (*the details of statutory rules made in the 1980s are very similar!*). Decree 1875/5008 stated that 'nationality society may be formed only as literature or cultural society; in case of political and workers' societies it is not possible to form branches'.¹⁰⁰

Act XLIII of 1912 authorised the Ministry of the Interior to prohibit the establishment of new societies, and to dissolve the earlier registered voluntary organisations in case of war. *As the entering into force of the act was facilitated by decree nr. 1914/5735, it was not allowed to establish any societies for two years.* This ban was somewhat facilitated by Government Decree 1916/1442, but for the establishment of new societies the permission of the Ministry of the Interior was needed in the future. The Ministry also had the right to limit the activities of societies which were considered dangerous for the state, and in some cases it could completely ban their operation. This regulation – except for a short intermezzo when the Károlyi-government ensured the freedom of association and assembly in common Act III of 1919 – practically remained unchanged till 1945. The strict conditions made it somewhat more difficult, but not impossible for almost all sectors, professional, religious and age groups of society to establish their own societies (even without state approval). It was another sign of mistrust against the civil sector that their increased supervision and control was also regulated, which practically made the permission of the establishment of new societies by the ministerial approval of the founding document an authority decision which could be exercised with discretion.

⁹⁸ Kuti (1998) (n 25) 34.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

Local authorities regularly checked societies working in their territory and made annual reports to the Minister of Interior about their lawful operation. According to the order, ‘the close *supervision of the operation and management* of those societies shall be performed which receive authority or social support. This control shall cover the establishment of whether the financial management of the society may be considered appropriate regarding the fulfilment of the public interest goal set forth in the founding document, and whether *expenses* (administrative, etc.) are proportionate with the *achieved results*.’ Those which did not fulfil this condition were considered useless (General Decree of the Ministry of the Interior nr. 181. 001/1937). In addition to the general prohibitions, serious legal limitations were introduced against certain organisations, including racial (‘Jew laws’) and directly political restrictions. For example, the operation of youth organisations operating at universities and colleges were placed under authority control. The minister for religion and public education was responsible for it, thus it could regulate ‘which preconditions the university and college students have to fulfil in order to be member of societies or society-like organisation which are not under university or college authority.’ (Act XXXIX of 1940 on the application of university or college students)

In the 1920s, 1930s and 1940s the ‘majority of the personal and financial burdens of caring for the poor was still carried out by private donations, mainly by the society Caritas’. In the 1930s approximately 900 social institutions worked all over the country with this purpose: in Budapest 77 societies and a large number of church communities cared for the poor, among them 13 operated public kitchens.¹⁰¹

The social and cultural diversification, the process of the late rising of the middle class in a country which was slowly leaving feudalism behind had its effect also in the self-organisation of society. The newly (or repeatedly) established social classes obviously established their voluntary organisations, which did not only strengthen group identity, but also carried on a lot of interest protection, social, cultural and leisure activities. In addition to the already operating organisations of the nobility, intellectuals and citizens (and partly upon their example) societies of workers, craftsmen and village people were formed one after the other in the last decades of the 19th century and in the first decades of the 20th century. Due to this the forming and operation of associations was a mass phenomenon in Hungary during the period between the two world wars, it became part of the everyday life of society.

All in all, it may be concluded that in the period before World War II Hungary had a developed association sector. However, the role of associations in the provision of services was rather small. In 1932 one-fifth of all associations operated in the field of health care and social services, but these were mainly self-aiding societies. The rate of real charity organisations barely reached 6%¹⁰², and their activities were mainly limited to helping the poor in the cities. The extremely low rate of societies taking part in education further dropped between 1878 and 1932.¹⁰³

The situation of foundations was different, because they had traditionally strong ties to charity goals, but – in lack of members – they played less active part in the organisation of

¹⁰¹ Gyáni – Kövér (n 95) 377.

¹⁰² Magyar statisztikai évkönyv. [Hungarian statistical yearbook] Budapest, 1934. 70.

¹⁰³ Ibid.

society. Due to their nature foundations participated in the improvement of social services mainly as supporters and financiers. It often happened that different welfare services were realised upon the cooperation of private foundations and state institutions. The donations of foundations, as well as the majority of private donations and legacies helped the work of social and education institutions run by the state. It was a common phenomenon to find ‘foundation beds’ in hospitals and ‘benefices’ in schools, at universities, orphanages, care institutions and alms-houses. It also happened several times – on the contrary – that the government contributed to the establishment of foundation service provider organisations by material assets or by providing land or buildings.¹⁰⁴ The aim to concentrate resources was shown in the orders through which in the 1920s fund raising was regulated, but it was clearly visible during the introduction of the new social policy model (which was known under the name Egri Norma [Eger Norm], then Magyar Norma [Hungarian Norm]).¹⁰⁵ The starting point of the new model was that churches, voluntary organisations and authorities have better chances to fight spreading poverty together than any of them acting alone. Its introduction – as the so-called Hungarian Norm – was stipulated for towns by decree nr. 1936/172000 of the Minister of Interior, but – with the permission of the chief constable – larger villages were also allowed to adopt it.¹⁰⁶

The relatively quick dissolution of traditional communities started already in the early years of the war. The ‘levente movement’ started its attack against the numerous, diverse, non-military movements and organisations in 1941–42.¹⁰⁷ In parallel with this, the social participation of certain communities was limited, and later the elimination of a complete race group took place.

6. Associations and social organisations after World War II and in the era of state socialism

Government decree 529/1945 abolished extreme right organisations, while Act I of 1946 on the form of state of Hungary declared the freedom of association, moreover, Act X of 1946 on the valid protection of fundamental rights realised – among others – the system of sanctions applicable in case of the violation of the right to association (including its hampering). *The gap between practice and the possibilities ensured by law grew endlessly. From 1947 autonomous organisations were targeted with rather various tools.* Nationalisation, public body established by law or transformed, centrally determined operating systems were among these tools, just like deletion from the land register or abolition. This means that the not prohibited organisations were put under full party and state control, just like

¹⁰⁴ Kuti (1998) (n 25) 37.

¹⁰⁵ Ibid. 39.

¹⁰⁶ Csizmadia (n 76) 95.

¹⁰⁷ Hankiss Elemér: Kelet-európai alternatívák. [Eastern-European alternatives] Közgazdasági és Jogi Könyvkiadó, Budapest, 1989. 67.

the new type of 'social organisations' established artificially from above, which, however, received state support.

The vanishing process of structurally centralised, traditional communities sped up in the second half of the 1940s. The KALOT (Catholic Young Men's National Council) had about half a million members and more than three thousand local organisations at the end of the 1930s, and at the time of its abolition in July 1946 it still ran 631 local organisations. Its twinning organisation, KALÁSZ – for the associations of women (Federation of Agrarian Catholic Young Women) – had approximately 950 local organisations in 1940 and 576 at the time of its abolition in 1946. And the KIOÉ, the Soli Deo Gloria and the Boys Scout Association have not been mentioned yet.¹⁰⁸

The majority of the societies was tousel and dissolved, while those surviving the prohibitions were placed under full scale party and state supervision. The establishment of new expeditious organisations was prevented by forces of power, instead of them centrally organised, so-called social organisations were established artificially.¹⁰⁹ 'The proliferation of communities would make decision making more difficult, it would disturb administration and would make social order less transparent' – as Hankiss describes the attitude of the era.¹¹⁰

For the description of the transforming communities of the era we shall consider the differences between direct communities and communities of ideas. Members of a community of ideas may live far from each other in space; they are tied together by the knowledge of shared values and goals without actually knowing each other. The same was true for religious denominations or members of the humanity movement in the 16th century,¹¹¹ but internationalist goals give completely new meaning for the notion, especially in a social environment where the primary goal is to completely eliminate the organic structures of the past. However, in the group and interpersonal relations of the new era not only the emergence of new processes, but also the establishment of very 'traditional' phenomena may be observed, too: for example, Johan Galtung calls the system of personal dependencies and relationships clearly observable in state socialism 'new feudal' organisation.¹¹²

Foundations were considered even more suspicious by the central power than societies, in so far as 'from the aspect of the central power the foundations seem to be dangerous, especially in the fields (in education, culture, social policy) which the central power wants to control.'¹¹³ The Rákosi-system abolished foundations, moreover, eliminated the institution of foundation from the Hungarian legal system. Decision 474/1948 of the Economic Council ordered the dissolution of public foundations and their merger into the state budget, and statutory rule 2/1949 stipulated that the establishment and operation of private foundations shall be subject to the approval of the competent minister, based on the goal set forth in the founding document.

¹⁰⁸ Ibid. 68–69.

¹⁰⁹ Kuti (1998) (n 25) 45–46.

¹¹⁰ Hankiss (n 107). 70.

¹¹¹ Ibid. 66.

¹¹² Johan Galtung: Feudal Systems, Structural Violence and the Structural Theory of Revolution. *Peace and Social Structure* 1978/3. 51–73.

¹¹³ Kuti (1998) (n 25) 46.

Based on the legal approach of the time, Act IV of 1959 on the Civil Code wished to solve the problem of donating the property of private persons to public goal by introducing the institution of *undertaking obligation for public interest*, which was partly similar to the institution of foundation, but by the undertaking of obligation for public interest *no new legal entity was established*. The establishment of foundation became possible again due to the modification of the Civil Code in 1987. Statutory Rule 11 of 1987, by establishing articles 74/A-74/F of the Civil Code made it possible for private and legal persons to establish foundations for public interest goals set forth in its founding document. The legal personality of the foundation was declared by the law.

The Constitution of 1949 ensured the freedom of association only for ‘workers’. Based on authorisation set forth in Decree nr. 7330/1946 M.É. the Minister of Interior gradually eliminated those associations the establishment of which was not initiated by the state.¹¹⁴

After the intermezzo of 1956, the modification of the Constitution in 1972 recognised the freedom of association for citizens, instead of ‘workers’, but it did not change the detailed rules of how to exercise of this freedom. This means that the Statutory Rule 35 of 1970 on associations remained in force, and it stipulated that the start of the organisation works of associations also had to be reported to the state administrative authority competent upon the goal of the association. Moreover, ten years later further restrictions were stipulated in a new law (Statutory Rule 29 of 1981 on the modification and revised text of Statutory Rule 35 of 1970 on associations). According to this, the competent authority was free to ban the first steps of organisation if it believed that the goal of the association was in violation of state, social or economic order.

Citizens almost exclusively established politically neutral – mainly public culture and leisure (sport) – associations which seemed to be harmless in the opinion of the central power.¹¹⁵ ‘Social and mass organisations, movements, primarily trade unions, co-operatives and youth organisations have important role in expressing the interests of groups and individuals. Frequent consultations among the party and the government, and the representatives of such organisations – at different levels – contribute to the review and negotiation of interests, which has been used for a long time and has been the working practice of our party’ – explains János Kádár, first secretary of the MSZMP KB (Hungarian Socialist Workers’ Party Political Executive Committee) of the time.¹¹⁶ ‘Mass organisations and movements are directed by the party with ideological and political tools’ – stated the 12th congress of the MSZMP – by preserving the ‘revolutionary leading team’ feature of the party. ‘The primary goal of mass organisations is to motivate – in diverse forms, at all levels of society – for the better performance of actual political, social and economic tasks and represent the interests of their members.’¹¹⁷

¹¹⁴ Ibid., 48.

¹¹⁵ Ibid., 49.

¹¹⁶ Kádár János: A szocializmus megújulása Magyarországon. Válogatott beszédek és cikkek 1957–1986. [Renewal of socialism in Hungary. Selected speeches and articles 1957–1986.] Kossuth, Budapest, 1986. 262.

¹¹⁷ A Magyar Szocialista Munkáspárt XII: kongresszusa. 1980. március 24–27. [12th Congress of the Hungarian Socialist Workers’ Party, 24–27 March 1980.] MSZMP publication, Budapest, 1980. 138.

From the end of the 1970s and the beginning of the 1980s on, the authorities were suspicious about the seemingly politically neutral organisations of citizens (youth clubs, film clubs, amateur theatre clubs, intellectual societies, dance clubs, etc.), but abolitions were rare. Due to the movements starting at the beginning of the 1980s the Presidential Council modified Statutory Rule 35 of 1970 on associations with Statutory Rule 29 of 1981 and Statutory Rule 27 of 1983. It did it in a way that the organisation work could start only upon the prior written permission of the authority, and the actual work of the association could start only after the approval of the statute by the authority and after the registration. This was regulated without any court remedies, which meant that the authority was free to prohibit the establishment of associations without consequences, by administrative measures.¹¹⁸

Among conflicts and temporal prohibitions, the central power still tolerated the operation of the various organisations [SZETA (Fund for the Support of the Poor), public colleges, aviation universities] of the opposition which later became the driving force of the change in the system – it tolerated but occasionally tried to hinder them.

The legal ‘rehabilitation’ of foundations already happened before the political changes, in 1987, as with Statutory Rule 11 of 1987 of the Presidential Council of the People’s Republic of Hungary the institution was reintroduced into the Civil Code.

Two years after the official acknowledgement of the institution of foundation, the Parliament enacted Act II of 1989 on the Right to Association with which it established the legal guarantees of the freedom of association. Article 1 of the act states that ‘The right of association is a fundamental freedom to which everyone is entitled and which the Republic of Hungary recognizes, while ensuring its free exercise. Under the right of association everyone has the right to form organizations or communities with others or to participate in the activities thereof.’

The Act on the Right to Association abolished all previous statutory rules and modified the Civil Code. This was the time when direct state administrative supervision of associations was abolished, too. Changes originating from the approval of the democratic constitution(al reform) (Act XXXI of 1989 on the modification of the Constitution) may be summarised in a way that association was granted organisational, economic and social autonomy which it deserved in line with constitutionalism, but the regulation was perhaps too brief about associations and social organisations (e.g. only three articles in the Civil Code).

The settlement of the legal status of foundations and associations, therefore, preceded political transition, which shows that the development of the civil sector was not only a consequence, but – at least partly – a sign of the changes.¹¹⁹

6.1. The notion of civil society in the Kádár-regime

Civil society, as a key notion has been mentioned already in the Kádarian authoritarian regime, when ‘democratic players want to understand themselves, and it is also an important factor in the newer analyses of the problems of democratic transition.’¹²⁰ These analyses

¹¹⁸ Hankiss (n 107) 100–101.

¹¹⁹ Kuti (1998) (n 25) 53.

¹²⁰ Arató András – Jean Cohen: Civil társadalom és demokratikus átmenet Latin-Amerikában és Kelet-Európában [Civil society and democratic transition in South-America and in Eastern-Europe] *Mozgó Világ* 1992/7. 17.

focus on the shift from authoritarian power, the transition which may be divided into two – less artificial – phases. The first one is the phase of ‘liberation’ (which may be defined by the restoration and extension of individual and group rights), which is followed by the second phase of ‘democratisation’. The success of Hungarian transition (including the political transition of 1989–1990) significantly depended on the revival of ‘civil society’. The notion used in different analyses means the network of formalised groups and organisations among families, small groups and bodies and organisations which may be definitely considered ‘state representatives’ mediating between the INDIVIDUAL, the STATE, the private and community sector. The organisations of the Hungarian society at the time of the transition – contrary to clans, mafias, clicks, clubs and underground movements already have public, civil status which is related to the ‘acknowledged right to be’ and to the ability to ‘openly discuss (...) common issues and publicly step up for the protection of lawful interests.’¹²¹ In addition to the representation of interests, other authors stress the notion of self-expression, and there are some who interpret the revival of civil society in a way that it reaches its peak in a strongly mobilised and concentrated form which is characterised by the ‘mobilization of masses’ and ‘people’s movement’, and when ‘the different groups and levels of the civil society temporarily develop one single collective identity.’¹²²

The above mentioned notion of the mass is also used with two meanings.¹²³ On the one hand: in the liberalising Kádarian authoritarian state specific and well distinguishable levels of civil society get into moving: intellectual groups, middle class (!) organisations, human rights organisations, professional associations, movements of industrial workers, etc. These groups, societies, organisations do not melt into one unrecognisable mass even in the ‘melting pot’ of democratic transition. On the other hand, the fora of civil society which resuscitated like a phoenix bird are usually ‘public’ and not ‘mass events’, in so far as it becomes clear that even beyond parties ‘the exercising and learning of citizenship may bloom through the discussion of everyday problems’.¹²⁴

There is an important aspect which explains why the change in the system, the political transition did not have a wide base covering all social levels and groups: ‘The fact that for the first time in the history of man the group of intellectuals becomes a ruling power prohibits the emergence of different class ideologies and the establishment of the organic intellectual group of suppressed classes.’¹²⁵ One of the most important questions of the transition is the problem of the identity of the masses of peasants and workers. The reasoning of the ideologists of the Kádarian socialism was convincing, power belongs to workers, therefore workers’ organisations are not needed any more. Under the label of modern, caring, atheist state almost all social issues were excluded from the scope of individual and community responsibility, the interest revealing, aggregating and repre-

¹²¹ Kis János: Korklátainkról és lehetőségeinkről. [About our limits and possibilities] In: A monori tanácskozás. Illegális kiadvány [Monor discussions. Illegal publication] 1985. 8.

¹²² Szilágyi Ákos: Ezerkilencszáznolcvannégyen innen és túl (A negatív utópiák társadalomképe) [Here and beyond nineteen-eighty-four (Social vision of negative utopias)] Magvető Kiadó, Budapest, 130.

¹²³ Kis János (n 121) 8.

¹²⁴ Ibid. 10.

¹²⁵ Konrád György – Szélényi Iván: Az értelmiség útja az osztályhatalomhoz. [The way of the class of intellectuals to class power] Gondolat Kiadó, Budapest, 1989. 112.

sentative role taking nature of trade unions gradually fades away, and they are replaced by bodies controlling (!) workers, even though they are called trade unions. Maybe the strongest dysfunction of these trade unions is that they include everyone from the sectorial minister to unskilled workers, making it impossible for workers to represent their own values and prohibiting the establishment of a workers aristocracy, as a result of an organic development. I shall refer to Szelényi, who stated that '[in Hungary] workers sense some kind of class dichotomy, they have strong sense of identity, moreover, they are able to observe the conflicting features of class relationships, but they miss the feeling of class totalitarianism and the vision of any other alternative'.¹²⁶

Based on the Hungarian literature of the past three decades, the domestic notion of civil society may be defined as follows (with significant simplification): A notion which is often used in sociology and political literature, which refers to a self-organising community of independent citizens, which is separate from state power. In these definitions of the idea of civil society it is an important factor that people are able to harmonise their lives and activities without the intervention of the state, to protect their interests against the state if necessary, and to limit the excessive power of state.¹²⁷

7. Summary, i.e the main historical features of the history of civil (voluntary) organisations in Hungary

The development of the Hungarian civil/non-profit sector – as we interpret it today – was historically characterised by intermissions and a partly organic institutionalisation. The development of the non-profit sector in recent times, since the transition, has been strongly influenced by behavioural patterns established during the previous decades, or even centuries. It is possible to understand the present processes only if we manage to discover those elements of historical experiences which are still present in the collective memory, i.e. 'seem to have outstanding importance from the aspect of today's problems and development perspectives'.¹²⁸

Cooperation between the state and the non-profit sector has historically had four very important areas, namely

- a) establishment of social policy,
- b) financing of welfare services,
- c) specific service provider activities and
- d) establishment of regulatory frameworks.

The state 'has never been in a situation in which it could have formed social policy on its own, even though it had made several (sometimes aggressive) attempts to monopolize this role. In the first centuries the directions of the development of social and educational

¹²⁶ Szelényi Iván: Új osztály, állam, politika. [New class, state, politics] Európa Könyvkiadó, Budapest, 1990. 44.

¹²⁷ See Ágh Attila: Az önszabályzó társadalom. [Self-regulating society] Kossuth Kiadó, Budapest, 1989.

¹²⁸ Kuti (1998) (n 25) 53.

services were determined by the most important service providers and financiers, which means that churches, kings, and somewhat later town magistrates and guilds all had some influence. As the positions of the government strengthened continuously during the centuries, the techniques of social participation had to be improved as well.¹²⁹

No matter which historical period is under examination, the strange duality (double pressure) of striving for independence (autonomy) and the need for external financial tools – indirectly or directly provided by the state – has always been observable regarding the examined organisations. Direct and indirect state support has been popular already in the middle ages, the activities of charity organisations were assisted by royal donations, different privileges and tax allowances. ‘The foundations of the first (church-run) hospitals were established by the generous donations of King Stephen. Before the invasion of the Tatars King Béla IV exempted all hospitals of the country from paying wine tax. In the support of non-profit organisations the state has used the same financing techniques ever since, the only thing that has changed is that the specific forms of appearance has widened and some sort of guarantee elements have been built into the system.’¹³⁰ State donation based on individual decisions has been more and more supplemented by frequent, sometimes contractually guaranteed form of governmental support. From the present techniques of state support for non-profit organisations only the tax allowances available for the donator may be considered new.¹³¹

During the existence of the kingdom – in addition to the primacy of the Catholic Church – the king always tried to establish guarantees for providing certain parts of the churches’ income to the caretaking of the poor, and it also founded and supported several charity institutions. Moreover, for the citizens of royal free cities the king ensured a set of rights, by this enabling them to establish those secular charity institutions which are not under the influence of the Catholic Church any more.¹³² With the spread of Protestantism the Catholic Church directed its attention – in addition to (and sometimes instead of) the issues of the poor and of health care – to education, as a strategic field where it could enlist (or in the given situation regain) followers.

Moreover, it is important to stress that in addition to needs and expectations emerging from the church directly or from other organisations through the dogmas of the church from the 19th century an important ‘pushing force’ of the development of civil society was the establishment and development of nationality movements.

The historical development of the relationship between the state and voluntary organisations has been – all along – characterised by the various combinations of fluctuation, cooperation and confrontation.¹³³ By the beginning of the 1980s the division of the virtual unity of the central power and society had become clear; the (civil) ‘society had begun its detachment from the traditional provider state’.¹³⁴ This period was also the time of the

¹²⁹ Ibid. 58.

¹³⁰ Ibid. 60.

¹³¹ Ibid.

¹³² Ibid. 53.

¹³³ Ibid. 56.

¹³⁴ Bihari Mihály (ed.): A többpártrendszer kialakulása Magyarországon 1985–1991. [Establishment of multi-party system in Hungary 1985–1991] Kossuth Könyvkiadó, Budapest, 1992. 32.

‘division’ of society; an alternative or ‘political’ civil society¹³⁵ was also born, the members of which were primarily bound together by ‘the linguistic culture of criticism’, and due to partly this, partly their conspirative-illegal methods they were unable to widely spread their norms (patterns) of ethics and the organisation of society. In the 1980s the notion of civil society – which was part of common talk through intellectual groups – had radical political meaning: it was characterised by the resistance against power, the participatory democracy and by the third way.¹³⁶

There were some periods of time when due to political reasons there was no legal possibility to establish civil organisations, as we interpret them today (1914–16), or even though the regulations made it formally possible, but the new establishments or the operation of already existing organisations were made impossible by administrative means.

Artificial communities¹³⁷ established during socialism could not become real communities, and some of the alternative movements started their operations under the aegis of social organisations [Hazafias Népfront, KISZ-organisations (Communist Youth Alliance)] established artificially as supporters of the regime.

The communist regime that took over Hungary in 1947 and lasted more than 40 years halted the development of the voluntary sector, destroying and vilifying civil society. The government banned most voluntary associations. What remained of the voluntary sector was nationalized and brought under state control. The right of association was denied, and there was no way to set up a foundation either. On paper, the communist regime had the loftiest declarations concerning the right of association. However, in practice, any application of such declarations and written laws would have been inconceivable.¹³⁸

The 1956 Revolution revealed that communist governments had been able to dissolve most of the voluntary organisations, but they could not completely eradicate citizens’ autonomy, solidarity and private initiatives. The failed revolution was followed by a tacit compromise: a more flexible version of state-socialism was developed. Gradual reforms were introduced in the economy, more freedom was granted to people in their private life. Reforms, gradual changes, realization of the poor performance of state delivery systems, all led to a more tolerant government attitude towards civic initiatives. From the 1980s this change speeded up, and after the mid-1980s it became obvious that the crisis of the system was so fundamental that any fine-tuning would have been useless. There was a need for a major overhaul.¹³⁹

‘This gradual process of reforms explains the fact that the rehabilitation of civil society was long underway before the final collapse of the communist system in Hungary. One of these steps was the ‘rehabilitation’ of foundations: the legal provisions pertaining to them reappeared in the Civil Code in 1987. By the time the breakdown of the Soviet Bloc had

¹³⁵ Csizmadia Ervin: A társadalom és a mai rendszer. [Society and today’s system] *Valóság* 1991/4. 43–63.

¹³⁶ Györfly Gábor: A non-profit szervezetek ismérvei és tevékenységük. [Features and activities of non-profit organisations] In: Török – Dr. Vincze (eds.): *Alapfokú kézikönyv civil szervezetek számára*. [Basic manual for civil organisations] NIOK – SOROS, Budapest, 1998. 19.

¹³⁷ Hankiss (n 107) 70.

¹³⁸ Renáta Nagy – István Sebestény: Methodological Practice and Practical Methodology: Fifteen Years in Non-profit Statistics. *Hungarian Statistical Review* (2008) Volume 86. Special Number 12. 114.

¹³⁹ *Ibid.*

made fundamental political changes feasible in 1989, civil society organisations were numerous, developed and widespread enough to become important actors of the systemic change. Since then, they have developed together with other institutions of the economy and society, trying to find appropriate answers to the challenges created by the process of transition.¹⁴⁰

The Hungarian (and in a broader sense Central-Eastern European regional) history of the development of civil society is a partial explanation for the question of why new Central European democracies did not build the post-1989 political system on participatory, finely tuned social coordinative procedures and institutional systems, interpreting parliamentarism as the parliamentary monopoly of making politics. During their research Anheier and Seibel concluded that during the political transition the relationship of state and society was characterised by cooperative segmentation, its basis was provided by intellectuals, it was voluntary and the typical organisations of the sector were service provider foundations.¹⁴¹

In the opinion of one of the most important Hungarian authors, Éva Kuti one of the most durable tendencies – in addition to the before mentioned, incorporating the events which happened after the examined period – is the occasional, incoherent nature of the all time regulations: '[it] seems that the lack of truly customised and comprehensive regulation is the chronic illness of Hungarian non-profit sector. Transparent, permanently and consistently enforced rules applicable for all organisations have been missed for a long time, and have not been established until today. It is a question whether such 'ideal' situation can be established at all, ever.'¹⁴²

¹⁴⁰ Ibid.

¹⁴¹ Anheier, Helmut – Seibel, Wolfgang: A non-profit szektor és a társadalmi átalakulás. [Non-profit sector and social transition] *Európa Fórum* 1993/3. 27.

¹⁴² Kuti (1998) (n 25) 61

Part III

LEGAL AND GENERAL CONTENT OF THE CIVIL SOCIETY BETWEEN 1989 AND 2010 IN HUNGARY

1. The 1989 transition and the main characteristics of the subsequent period

In Hungary after World War II the major part of economic activities was conducted by state-owned enterprises or cooperatives and state farms. Although Hungary enjoyed one of the most liberal and economically advanced economies of the former Eastern bloc, both agriculture and industry began to suffer from several internal and external effects (oil-crisis etc.) in the 70's, and Hungary's net foreign debt rose significantly – from \$1 billion in 1973 to \$15 billion in 1993. After the fall of communism in Eastern Europe, the former Soviet satellites had to be transformed from a one-party political system and centrally-planned economy to a market economy with a multi-party political system.

Hungary is widely known to have one of the most successful 'transition' economies and since the early 90s it has received a disproportionate share of direct foreign investment.¹⁴³ 'The democratically elected governments of the 1990s privatized several state-owned companies, liberalized markets, attracted foreign direct investment and restructured the economy, which were dominated by private and internationally competitive companies in those years. Hungary reformed its industrial relations and institutionalized a cooperation between the economic interest associations and the government. Political and economic reforms spurred the economic growth, which increased significantly from 1996 onward. Governments successfully reduced the tension with the neighboring countries, which had become after the First World War home to sizeable Hungarian ethnic minorities.'¹⁴⁴

Some developments, from liberalization and democratization to privatization that struck deep at the heart of traditional attitudes led to fundamental changes in the society; the make-up of Hungarian society altered significantly.¹⁴⁵ In the last two decades in the economic sphere, Hungary found itself confronted by even greater global pressures. It was a period of intense and often painful social, economic and political upheaval. Many services and functions were removed from the state hands and placed in the control of bodies managed by different concerns. A large number of people were encouraged to buy, and subsequently bought, their council house. A major programme of privatisation put industries nationalised after 1945 back into private hands, and downgraded the power and position of the trade unions.¹⁴⁶ The European Union acknowledged the success of the country's

¹⁴³ <http://www.freedomhouse.org/report/nations-transit/2005/hungary>>accessed 17 May 2012

¹⁴⁴ *BTI 2010. Hungary Country Report*. Bertelsmann Stiftung, Gütersloh, 2009. 3.

¹⁴⁵ *Jack Straw MP: The Changing Role of the British State*...<http://www.nlgn.org.uk/public/2007/the-changing-role-of-the-british-state/>>accessed 11 April 2009

¹⁴⁶ *Ibid.*

democratic and economic transformation by granting membership to Hungary in 2004¹⁴⁷ by a decision which was supposed to herald a new era of prosperity.¹⁴⁸

Nevertheless 'Against this backdrop of socio-economic and cultural change, previously entrenched views began to shift, with many people displaying a more individualist, consumerist, less class and state orientated outlook. (...) The private realm of individual choice and freedom – at least partly autonomous from the various organs of the state – greatly expanded. Society became more atomised.¹⁴⁹ In sum, socio-economic and political changes over several decades have given rise to a new kind of citizen, less deferential and more demanding than in the past.'¹⁵⁰ Traditional social and political identities and affiliations have declined; the concept of voting as a civic duty has weakened; at the same time the public wants more control over decisions.¹⁵¹

1.1. Features of Hungarian public and legal politics

'In 1989, round-table discussions were established following the Polish example. However, given the prevailing circumstances in Hungary – a demobilized and apolitical society – the debates remained exclusive and resulted in a compromise negotiated by the elites. The compromise consisted of an agreement to hold free elections in 1990 and to implement constitutional amendments necessary for this process. Center-right political groups that had emerged from the opposition won the first democratic elections. In the years that followed, Hungary was able to establish a stable democratic political system characterized by several alternating governments of either center-right or socialist-liberal coalitions, all of which were largely sustained over their full terms of office. Reforms were implemented in all areas of public policy and society necessary to achieve democracy: public administration, the judicial system, the media, the non-governmental sector, education and social affairs.'¹⁵²

A starting point of this subchapter is that new Central-Eastern European democracies established after 1989 did not build the political system on layered, sophisticated consultation procedures and institutional systems based on wide scale social participation, but – almost exclusively – on the Parliament-centred politic formation structures operating on the principle of representation. Many believe that one of the greatest problems of the societies getting out from under a dictatorship is that due to the lack of the civil society filling in the gap between individuals and the state during their socialisation, the members of these societies could never actually learn to incorporate the identification of problems, to formulate their interests, to exchange their thoughts, to harmonise different opinions, and as a result the various problem-handling methods were not developed, either. From the side of the public it may be stated that in Hungary the legal and institutional requirements

¹⁴⁷ BTI 2010. Hungary Country Report. (n 144) 3.

¹⁴⁸ *Jack Straw MP: The Changing Role of the British State...*<http://www.nlgn.org.uk/public/2007/the-changing-role-of-the-british-state/>>accessed 11 April 2009

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² BTI 2010. Hungary Country Report. (n 144) 3.

of representative democracy were fulfilled after 1990, but since then no material change has occurred in order to establish participative democracy; this means that the Hungarian democracy 'has frozen into' the level of representative democracy.¹⁵³

A father tendency, a feature which may be hardly separated from the one mentioned earlier is *that the all-time state* – formed after the transition – *imitates, reconstructs and replaces the civil sector* through its conscious efforts, by this making it weaker. During the analysis of this, it must not be forgotten that in the economic and sociological literature of the past one or two decades the state, by undertaking the 'replacement' and 'simulation' of the organisation of market and by self-regulating the social mechanisms and the political organisation of society, it eventually hampers the connection between political decision-making mechanisms and the actual fragmentation of the interests of society.

*In the 1990s – after the transition – there was a regrettable shift: during the transition to a market economy, the state formally withdrew from a number of fields, but during this 'abolishment of the state' several tasks could not be exposed to the profit-oriented processes of the market. These tasks were usually incorporated to the so-called nonprofit sector, which was unfortunately mixed up with the civil organisations both legally and practically: 'It often happened that in complete sectors only the signboards were repainted, shifted from state to public utility status, while the old structure, the old system of operation, the state financing and the old 'expert' staff remained.'*¹⁵⁴ *This environment, however, had a weakening effect on organised civil society, upholding its – unnecessarily strong – dependent status.*

The gradual weakening of the state and the failure of the substantial reform of the state budget together resulted in the formation of a territorially big, but not efficient state. 'The Hungarian state model became too extended for night guard state and too weak for welfare state. This model could be mostly named 'speed bump state' as it spreads along many fields of the economy and of the society, but it is not present where its strength and organisational skills would be needed the most; it protects regarding its intention, but actually it rather breaks down the processes, wants to obstacle bad, but eventually it can be bypassed and stepped through'.¹⁵⁵

Based on the main features of the public policy/administrative environment it must be stated about Hungary in advance that a) due to the traditional 'from top-to down' system, a general – and tendency-like – weakness is the lack of democratic control, accountability and transparency; b) due to the politicised and instable practice of the reconciliation of interests,¹⁵⁶ the quality of the decisions made in the public sector is often inadequate, as

¹⁵³ Jenei György. Adalékok az állami szerepvállalás közpolitika-elméleti háttéréről. [Supplements to the public policy – theoretical background of state participation] In: Hosszú Hortenzia and Gellén Márton (eds.): *Államszerep válság idején* [State role in crisis] COMPLEX, Budapest, 2010. 95.

¹⁵⁴ Pankucsi Márta: Civilekkel a civilekért – Az ellenzéki szerveződésektől a minisztériumon át a Furmann alapítványokig. [With civilians for civilians – From opposition organisations through the ministry to the Furmann foundations] In: Simon János (ed.): *Civil társadalom és érdekképviselet Közép-Európában*. [Civil society and the representation of interests in Central Europe] L'Harmattan – CEPoliti. Budapest, 2012. 144.

¹⁵⁵ Pulay Gyula: Az éjjeliőr államtól a fekvőrendőr államig. Merre tovább? [From night guard state to speed bump state. Which way to go?] *Új Magyar Közigazgatás* 2010/6–7. 29.

¹⁵⁶ Gerő Márton – Kopper Ákos: Fake and Dishonest: Pathologies of Differentiation of the Civil and the Political Sphere in Hungary. *Journal of Civil Society* (2013) Vol. 9 Issue 4, 361–374.

is their execution; c) public policy has balance problems; the weight and coordination of the relevant players is disproportionate and incalculable due to the extreme politicisation, and to the fact that political predominance characterises the relationship of the political-administrative system and society; d) the final phase of public policy is missing; public policy processes begin but they often do not get to the end. There is no evaluation phase and closure.¹⁵⁷ Within the scope of the latter evaluation, the preliminary and subsequent impact studies are determinative, the main goal of which is grounding the decision-making situation of the legislator, in so far as the analysis expands the pool of factors, the consideration of which is – or should be – essential for a carefully planned, grounded decision.¹⁵⁸ In the Hungarian model of public policy decision making – as mentioned before – the ‘top-down’ approach is dominant, in so far as the institutional mechanisms of the involvement of interest protection-integrative organisations operate only formally.¹⁵⁹ It is inseparable from the latter fact that the traditional features of the Hungarian political culture are paternalism, intolerance and the transformation of personal relations into political ones,¹⁶⁰ and last, but not least the presence of corruption phenomena, which may be observed at a degree exceeding the average of the surrounding area.¹⁶¹ Among the classic governmental failure phenomena – which is not traditionally Hungarian, but may definitely be observed here as well – the theoretical difficulties of setting and measuring public policy goals may be mentioned, as well as the influence of strong interest groups, the difficulties related to the size and complexity of governmental activities, and to the causal interconnection of certain public policy problems.¹⁶²

It is also important that in Hungary ‘[the] all-time present stands out by the strong and unreasonable delegitimizing of the all-time past, instead of putting forward its own performance’.¹⁶³ In this field of force even the changes of the governmental course have ‘disastrous’ features. The phenomenon of *value crisis* known in sociology can arise following such legitimacy struggle...¹⁶⁴

¹⁵⁷ Pesti, Sándor. 2001. *Közpolitika szöveggyűjtemény*. Budapest: Rejtjel. 206.

¹⁵⁸ In details see: *A Közigazgatás Korszerűsítésének kormánybiztosa által készített szempontok. “Részletes útmutató a hatályos jogszabályok utólagos és jogszabálytervezetek előzetes felülvizsgálatához.”* [Aspects prepared by the government commissioner of the Modernization of public administration. ‘Detailed guide to the subsequent review of valid laws and the preliminary review of draft laws.’] Közigazgatás Korszerűsítésének Kormánybiztosa. Budapest, 1995. 5.

¹⁵⁹ Jenei (n 153) 95.

¹⁶⁰ Kulcsár Kálmán: *Politika és jogszociológia*. [Politics and legal sociology] Akadémiai Kiadó, Budapest, 1995. 336.

¹⁶¹ http://www.ey.com/HU/hu/Newsroom/News-releases/global_fraud_survey_2010_pr>accessed 11 July 2013

¹⁶² Hajnal György: *Adalékok a magyar közpolitika kudarcaihoz*. [Supplements to the failures of Hungarian public politics] KszK ROP 3.1.1. Programigazgatóság, Budapest, 2008. 33.

¹⁶³ Szigeti Péter: *A Magyar Köztársaság jogrendszerének állapota 1989–2006*. [The state of the legal system of the Hungarian Republic 1989–2006] Akadémiai Kiadó, Budapest, 2008. 17.

¹⁶⁴ *Ibid*.

1.1.1. Multi-level Governance

The concept of multi-level governance has become extraordinarily fashionable in recent years.¹⁶⁵ The main value of the concept of multi-level governance is that it allows an understanding of complexity at and between different levels. In this sense, the vertical notion of multi-level governance, including but also seemingly ‘above’ and ‘below’ the nation state, goes alongside the horizontal notion of complex governance to address relationships between state and non-state actors, and new forms of public-private partnerships. This goes beyond a linear approach to the study of international organisations on the national polity and on specific thematic areas such as social policy. A multi-level governance perspective forces one to address processes of the supranationalisation, the decentralisation and the dispersal of authority as potentially coterminous, rather than engage in very narrow-ranged, linear, debates about the influence, or lack of influence, of international agencies.¹⁶⁶ ‘While multi-level governance remains a contested concept, its broad appeal reflects a shared concern with increased complexity, proliferating jurisdictions, the rise of non-state actors, and the related challenges to state power’.¹⁶⁷ Insofar as the transition in Central and Eastern Europe, and the wars of the Yugoslav succession, came at a time of increased focus on non-state actors, it is not surprising that a large literature has emerged focusing on the role of international and domestic non-state actors, in the context of the importation of Western models of civil society and democratization to the region.¹⁶⁸

This concept of multi-level governance refers also to the need to move away from understanding decision-making in terms of ‘discrete territorial levels’ and, instead, to get closer to the need of conceptualizing it in terms of ‘complex overlapping networks’.¹⁶⁹ Moreover, the concept forces an understanding of the ways in which traditional notions of democratic accountability are being undermined and challenged. The challenge to accountability has been raised in a variety of texts on post-communist transition.¹⁷⁰

Nevertheless, we have to underline the fact that the concept of multi-level governance does not derive from political and practical realities in Central and Eastern Europe, especially in Hungary.

¹⁶⁵ Paul Stubbs: Stretching Concepts Too Far? Multi-Level Governance. Policy Transfer and the Politics of Scale in South East Europe. *Southeast European Politics* (2005) Vol. VI. No. 2, 66.

¹⁶⁶ Ibid. 67.

¹⁶⁷ Ian Bache – Matthew Flinders: Themes and Issues in Multi-Level Governance. In: Ian Bache and Matthew Flinders (eds.): *Multi-level Governance*. Oxford University Press, 2004. 4–5.

¹⁶⁸ Stubbs (n 165) 68.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid. 68–69.

2. The content of the main concepts after 1989: civil or nonprofit?

Actually, to do any research on Hungarian Civil Society or on the Hungarian nonprofit sector we must have clear definitions, knowing where the legal, institutional and scientific boundaries of these social phenomena are.

2.1. From civil society to nonprofit organisations. Defining the concepts

2.1.1. General points of departure

In the 20th century, civil society became associated with notions of civility (Elias), popular participation and civic-mindedness (Verba), public sphere (Habermas), social capital (Putman, Coleman), culture (Gramsci) and community in the sense of communitarianism (Etzioni). The various concepts and approaches emphasize different aspects, elements, values and norms of civil society.¹⁷¹

‘Various philosophical and political arguments have also been mustered against the suspicion that the term civil society is obsolete. The case for civil society has been wide ranging. It has included the observation that a civil society gives preferential treatment to individuals’ daily freedom from violence and other incivilities (...); claims concerning the importance of enabling groups and individuals freely within the law to define and express their various social identities, as equals who have feelings for others and, thus, the capacity for trust and solidarity (...). There is also the argument that freedom of communication is impossible without networks of variously-sized non-state communication media (...); and the insistence that politically regulated and socially constrained markets are superior devices for eliminating all those factors of production that fail to perform according to current standards of efficiency. In recent years, there have also been efforts to counter the suspicion that civil society is an *ide’e passe’e* by thinking unconventionally and constructively about the optimal conditions under which democratic institutions can survive and flourish globally, especially after a century plagued by revolutionary upheavals, total war, totalitarianism, dictatorship, and state dirigisme marked by dysfunctions caused by ‘the overreach of the state’ (...). For the first time in their history, the political languages of democracy and civil society have become conjoined. Democracy has come to mean a special type of political system and way of life in which civil society and government tend to function as two necessary moments, separate but contiguous, distinct but interdependent, internal articulations of a system in which the exercise of power, whether in the spheres of civil society or government, is subject to public monitoring, compromise, and agreement. Seen in this novel way, democratization is defined as neither the extension of state power into the non-state sphere of civil society nor the abolition of government and the building

¹⁷¹ Helmut K. Anheier – Regina A. List: *Dictionary of Civil Society, Philanthropy and the Nonprofit Sector*. Routledge, London, 2005. 55.

of spontaneous agreement among citizens living within civil society. The unending quest for democracy, so it is claimed, must instead steer a course between these two unachievable and undesirable extremes. Democracy is seen as a never-ending process of apportioning and publicly monitoring the exercise of power by citizens within polities marked by the institutionally distinct – but always mediated – realms of civil society and government institutions. The revised understanding of democracy as more than simply a government by means of periodic elections, party competition, majority rule, and the rule of law has had wide global appeal. Truly remarkable is the way the language of civil society has in recent decades travelled to virtually all regions of the globe. The global talk of civil society is evidently bound up with the dramatic growth, especially during the second half of the twentieth century, of nongovernmental business and civic organisations operating within and beyond the borders of territorial states. It is even possible that the global extension of the concept signals a first step in the long-term emergence of common frameworks of meaning and identity underneath and across state boundaries – a tendency that resonates with, and practically reinforces, such trends as the globalization of communication media, the rebirth of international humanitarian law, and the growth of a shared sense within nongovernmental organisations and publics meaning that civilians have obligations to other civilians living beyond their borders, simply because they are civilians.¹⁷²

To sum up: civil society is not a singular, monolithic, separate entity, but a sphere constituted in relation to both state(s) and market(s), and indeed permeating both.¹⁷³ Civil society is the self-organisation of society outside the stricter realms of state power and market interests.¹⁷⁴ The complexity of civil society and its many relations and intersections with the economy, the state and the institutions like family, media or culture, make it not only possible but almost necessary to examine the concepts from different perspectives and orientations.¹⁷⁵ According to Talcott Parsons, it has been generally accepted that we live in a three- or four-sector society, and that it is sensible to develop a set of societal ‘silos’ for the study, credentialing and organisation of intellectual and practical life around these sectors.¹⁷⁶

Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power.¹⁷⁷ Civil societies are often populated by organisations such as registered charities, non-governmental organisations, community groups, women’s organisations, faith-based organisations, professional associations, trade unions, self-help groups, social movements, business associations.

¹⁷² John Keane: *Civil Society, Definitions and Approaches*. Springer-Verlag, Berlin/Heidelberg, 2009. http://johnkeane.net/wp-content/uploads/2011/01/jk_civil_society_definitions_encyclopedia.pdf >accessed 4 August 2011

¹⁷³ Helmut K. Anheier – Regina A. List (n 171) 54.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid. 55.

¹⁷⁶ Ibid.

¹⁷⁷ http://www.centroedelstein.org.br/PDF/Report/ccs_london.htm >accessed 22 September 2013

2.1.2. The concept of civil society in Central and Eastern Europe and in Hungary

In the contemporary period, the term civil society has proved useful in many fields of research. The originally eighteenth century term has also been used to make new and different sense of contemporary social and political developments.¹⁷⁸ In Poland, Czechoslovakia, Hungary, and elsewhere in the Eastern bloc as well, the language of civil society was a vital ingredient in the resistance to totalitarian regimes after the crushing of the Prague Spring; and it has featured in most political efforts to push back or overthrow dictatorship.¹⁷⁹

Civil society is generally considered to be a major factor in the breakdowns of the communist regimes in East-Central Europe and their subsequent democratic consolidation, but scarcely any attention has been paid to the specific characteristics of this social domain in state socialist settings. Marek Skovajsa proposes to distinguish two different types of civil society in the communist polities:

- 1) Independent civil society corresponds to standard Western notions of civil society as an autonomous sphere of associational life between state and family.¹⁸⁰
- 2) The so-called broader civil society encompasses associational structures controlled by the communist state that form the infrastructure of what will become component parts of a standard civil society once transition to democracy occurs. Broader civil societies in state socialist countries can be decomposed into several segments that differ from each other in the nature of their relationship to the regime.

From Skovajsa's point of view the broader civil society structures are more important (!) for the consolidation of civil societies after 1989 than independent civil society.¹⁸¹

In Central and Eastern Europe, major thinkers, like Václav Havel, Jacek Kuroń, Adam Michnik and Kiss János., sought to develop a theoretical framework for the concept of civil society. According to their conceptions, civil society rejects in the same way communist totalitarianism and ethnic nationalism. *Their efforts – and the efforts of the civil media – in addition to the formal constraints established by the public focused on the development of a parallel alternative political and cultural publicity.* They conceived the future society in the terms of the 'third way' that is something beyond communism and capitalism. After 1988 a significant cleavage occurred in this aspect, too: the alignment to the Western institutional patterns favoured the adoption of the topic characteristic to the debates concerning the role of civil society in the western trends.

It should also be emphasized that even in those twenty years that are presented in this chapter the concept of 'civil society' was not present with the same intensity in the attempts made by social sciences to describe society.

According to Antonin Wagner when in 1992 a group of international scholars met in Budapest and launched the International Society for Third Sector Research (ISTR), the

¹⁷⁸ Keane (2009) (n 172)

¹⁷⁹ Ibid.

¹⁸⁰ Marek Skovajsa: Independent and Broader Civil Society in East-Central European Democratizations. *Taiwan Journal of Democracy* (2008) Volume 4, No.2, 47–73.

¹⁸¹ Ibid.

abstract term ‘third sector’ was thought to be an appropriate substitute for the many other, culture-bound labels in use at the time, such as ‘nonprofit’, ‘non-governmental’, ‘independent’, ‘voluntary’.¹⁸² Two decades later ‘[the] concept of a third sector has disappeared from much of the scholarly discourse (...). In many quarters around the world the scientific community has replaced third sector by civil society.’¹⁸³ Wagner assumes that by choosing the formula ‘**civil and nonprofit organisation**’ many scholars and practitioners try to express that they have realised the difference between the two notions (*for further details regarding the concept of civil/nonprofit see subchapter 2.3.*).¹⁸⁴ He postulates that ‘third sector’ and ‘civil society’ represent two different categories of perception or scientific paradigms, one based on a socio-economic, the other on a political frame of reference.¹⁸⁵ According to Hannah Arendt, society has developed – in a long evolutionary process – forms of corrective collective action to counter the deficiencies of ownership- and citizenship-driven organisations: nonprofit organisations in response to the many forms of market failure and civil-society organisations as a complement to the inadequacies of the public sphere of the state and of the government.¹⁸⁶

Among the Hungarian concepts describing the phenomena of the civil sector there are many which in the recent decades ‘fell into disuse’ from both substantive law and the dogmatics, e.g. the concept of social organisation. The term social organisation is not appropriate anymore, because it does not include the foundations that appeared only in the eighties.¹⁸⁷ It is also problematic that this concept has a political and ideological surplus meaning, gained during the era of the socialist state.¹⁸⁸

In the period reviewed in this chapter in the Hungarian and the adopted literature¹⁸⁹ some sort of consensus emerged regarding the concept of civil society in connection with the following four points (conceptual elements):

1. Civil society is the network of independent organisations and associations of persons, which are different from the other institutions of the society due to their specific rules of establishment and operation. The definition of civil society is based on a broader understanding, including registered nonprofit non-governmental organisations (NGOs), but also other formally and informally organized citizens, groups, coalitions, movements, representatives of the media and educational institutions.¹⁹⁰ Larsson found that the term civil society was more often than not used to refer to the sum of NGOs.¹⁹¹

¹⁸² Antonin Wagner: Religion, Civil Society, and the Modern Welfare State. *XXI. Század – Tudományos Közlemények* (2009) 21, 31.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid. 33.

¹⁸⁶ Ibid.

¹⁸⁷ Kuti – Marschall (n 24) 61.

¹⁸⁸ Jagasics Béla: A nonprofit szféra elmélete. [Theory of the Nonprofit Sphere] Nonprofit Szolgáltató Központ, Zalaegerszeg, 2001. 13.

¹⁸⁹ Kondorosi Ferenc: Civil társadalom Magyarországon. Politika + Kultúra Alapítvány, Budapest. 1998. 45.

¹⁹⁰ <http://www.ceetrust.org/about-us/mission.html>>accessed 1 November 2013

¹⁹¹ Mimi Larsson: Civil Society in a New Democracy – A Look at Local Realities. DEMSTAR Research

2. It is not identical either with the government or with the private sector, although it is directly and organically connected to both.
3. The ethical principles of its existence are the enforcement of the human-civil rights, the rule of law, and the plurality of interests.
4. The civil society is destined to confront the will of the state with the values, aspirations and practices represented by it through the self-provided publicity and through the expression of interests. The most important means of this is 'community participation', the content of which in the European area is developed in great detail by the Aarhus Convention and by other legal instruments, too. Its three pillars are the right to information, the right to a voice and the right of appeal. These three pillars are complemented by the institutional system and by the package of measures elaborated for the preparation and qualification of the citizens to be able to become participants.

The above definition is, of course, not exclusive, and taking into account the social structures which differ from those of the developed world partly due to the slightly different development path, and partly to the lateness of their establishment, one can meet quite different interpretations and emphases (the importance of the alternative meanings continues to grow substantially in the economic crisis of the recent periods). In our days we also can meet a number of experiments which try to adapt the concept of civil society to the essential requirements of the era, mainly by inserting the concepts of information society and those of the globalization.

Of course, the existing concepts, the defined phenomena and the institutional opportunities provided by the law, can always be interpreted in the context of culture and that of the legal traditions which characterize the given medium. In the V4 countries, Western European civil society and civic control over the state were taken as examples to be followed. No matter how determined civic activists may be, however, they can attain very little if the rule of law does not function properly.¹⁹² From the aspect of maintenance of the rule of law, state should be under civic control. Civic control implies the social activity of both groups of people and also individuals.¹⁹³

It must be also mentioned that 'according to Act LIII of 1995 on Environmental Protection, local municipalities in Hungary are still considered part of civil society'.¹⁹⁴ *De jure et de facto*, local municipalities have comparatively little to do with civic control. Following the political changes in Eastern Europe around 1990, local municipalities were designed partly to counterbalance the state and partly to complement the state activity of public administration at a local level. Local municipalities may currently be regarded as part of the state power [even though newly set up districts (*járások*) have taken over many of the former tasks of the local self-governments]. Top-down effects implemented by the state, including local municipalities, can be counteracted by bottom-up effects. The bottom-up

Report No. 7 – May 2002, p. 23.

¹⁹² Julesz Máté: Civil Society and Environmental Protection. *JURA* 2012/2. 113.

¹⁹³ Ibid. 112.

¹⁹⁴ Ibid. 113.

effects are therefore left to not too strongly positioned associations and relatively powerless individuals.¹⁹⁵

2.1.3. The concept of civil society in Europe and the impact of the EU on the transformation of the concept of civil society

Due to their different history, social system and public administrative traditions in Europe the characteristics of the different countries have developed along different ways. Armstrong describes European civil society as multiform, multidimensional and multilevel.¹⁹⁶ It is multiform since so many countries, so many institutional forms and legislations rule it, moreover there are so many interpretations of civil society and civil society organisations. It is multidimensional since the organisations play a variety of roles in public life. Finally it is multilevel since civil society organisations and their associations work on local, regional, national, international and European levels, too.

According to a different aspect, the European civil society can be understood as an aggregate of national civil societies' organisations. Or it can be interpreted as a multitude of transnational networks where the national characteristics have become faded.¹⁹⁷ To be a European civil society organisation is more than to have members from the different member states, it has qualitative and quantitative characteristics as well.¹⁹⁸ A European umbrella organisation must have members from several EU member states, and has to meet some institutional criteria. Thus it is important to call an organisation European only when it focuses on the entirety of the European society, and when its structure reproduces the democratic principles of the EU, its membership represents the population of the member states.¹⁹⁹

The European Union has recognised the importance that civil society organisations gain ground both in public life and in the political expression of views – and though the relations between civil society and the European Union have already been exceptionally multiple, varied and diverse, just like civil society and the European institutional systems themselves, – after the signature of the Maastricht Treaty, the access to the European institutions have been gradually given to the representatives of civil society. This was a deliberate change on the EU side, and in the past fifteen years the representatives of civil society organisations take a greater role, so it would be proper to ask what the role of civil society is and could be in the procedure of the European integration.²⁰⁰

As civil society organisations engage into the institutional system at several points, the answer can be varied, too: the actors of civil society can play a role in making the institutional monster of the Union more human, it can decrease the gap between the citizens of

¹⁹⁵ Ibid.

¹⁹⁶ Armstrong, Kenneth A.: Rediscovering Civil Society: The European Union and the White Paper on Governance. *European Law Journal* (2002) 8(1) 113.

¹⁹⁷ Ibid.

¹⁹⁸ Nóra Sasvári (n 38) 12.

¹⁹⁹ Ibid.

²⁰⁰ Ibid. 5.

the Union and the decision-making institutions, it can strengthen the formation of European identity, it can open new ways of communication and information flow towards society, it can increase the acceptance of the EU by providing knowledge on it, and it can also reduce the passive ignorance of the public towards European issues. Besides, the European Union can have a fresh view: civil society has innovative resources that could be exploited and utilized for the benefit of the Communities.²⁰¹

Deriving from the multiple organisation of the institutional system and the several points of contact – in this regard there are only rough estimates, and even the most acknowledged experts on the field give an estimation only on the organisations in cooperation, as there has not been a comprehensive research on this in the past decades, – as well as from the problems of the definition of civil society from the general and the EU standpoints, the compound of formal and informal relations, the different member state regulations and their relations towards their own civil societies, the complexity of this field cannot be described in its integrity. At the same time despite these boundaries, these relations need to be put into the focus of study in the framework of political sciences, not only because the European institutions emphasize the formation, regulation and transparency of institutionalised relations since the 80s, but because in the formation of the European political system, as well as in the communication of the EU, the deliberate inclusion of civil society organisation has emerged.²⁰²

Relying upon these findings, the most important questions are how the representatives of civil

- society organisations in the EU are engaged in the decision-making procedure of the Union, what
- framework for this cooperation has been established by the European institutions, what the
- perspectives of the civil society dialogue are on the European level, and whether Hungarian civil organisations can join this process in effect.²⁰³

In the case of the creation of the European Union as a quasi supra-national union, civil society is starting to have a new dimension. Its function has changed; its former informal existence has been alternated by a formal co-operation with several EU institutions.²⁰⁴

There is no mandatory or binding EU legislation on the organisations of civil society, and the existing texts elaborated by different legal institutions are not necessarily closely linked as a set, they have a ‘fragmentary’ character.

For example, the following (non-binding) standards dealt / deal with NGOs:

- Declaration No. 23 annexed to the Maastricht Treaty, which highlights the importance of solidarity associations and foundations, and that of the civil dialogue.

²⁰¹ Ibid. 5–6.

²⁰² Ibid. 6.

²⁰³ Ibid.

²⁰⁴ Lucia Sedlakova – Tatiana Tokolyova: Development of the Civil Society of the Visegrad Region. In: István Tarrósy (ed.): *Social, Economic and Political Cohesion in the Danube Region in Light of EU Enlargement*. CEP, Bratislava, 2007. 37.

- Declaration No. 38 annexed to the Amsterdam Treaty, which stresses the importance of voluntary organisations
- The study issued by the Commission in June 1997 with the title ‘Promoting The Role Of Voluntary Organisations and Foundations in Europe’, which deals with the types of voluntary organisations and their common characteristics.
- The Opinion Of The Economic And Social Committee on ‘The role and contribution of civil society organisations in the building of Europe’ adopted on 22 September 1999 which attempted to determine the concept of civil society. Civil society is the collective term for all the organisational structures the members of which are prepared to help achieve consensus through public and democratic debate, have objectives and responsibilities that are of general interest and who also act as mediators between the public authorities and citizens.
- The Committee of Ministers of the European Council adopted a number of recommendations regarding the development of the measures to involve citizens in the decision making process at local level and to help them participate in local affairs. At the same time the Committee adopted recommendations for the Member States regarding the information of young people and the counseling activity offered to them and regarding the participation of the youth and the future of civil society.
- The Committee published in 2000 the paper entitled ‘The Committee And The Non-Governmental Organisations: Building A Stronger Partnership’, which – dealing with the actors of the ‘third sector’ – attempts to highlight the common characteristics of the non-governmental organisations (NGOs).
- The Committee published on 25 July 2001 The White Paper on Governance – an elaborate paper regarding the reform of the European governance – according to which the targeted civil society consists of the trade unions and employers’ organisations (the so-called ‘social partners’), the non-governmental organisations, the professional, charitable and grassroots associations, the organisations that involve citizens in local life and in a certain sense the churches and religious communities, too.

Civil society involvement, and the principles of openness, transparency, and participation were of major importance in the White Paper. In the light of these general principles, the Commission modified and extended the consultation instruments. Regarding each consultation mechanism and their participants and content, a large scale of international literature is available, but this book does not want to deal with these aspects.

From amongst the actual and most general characteristics of the consultation mechanisms we want to mention just one: the new EU member countries seem to gain access to the online consultations only hesitantly, which is also true for other EU consultation processes, too. The new member states from Central and Eastern Europe are still in the process of adapting to the Commission’s complex consultation regime. During this phase, the focus is not on online consultations; instead, interest representation is left to EU level interest organisations.²⁰⁵

²⁰⁵ Beate Kohler-Koch – Christine Quittkat: *De-Mystification of Participatory Democracy: EU-Governance and Civil Society*. Oxford University Press, 2013. 106.

The Lisbon Treaty, partly as a result of the work of the NGOs, included Article 11 which originally bore the title of ‘Participatory Democracy’, but ultimately this was not included in the final text. The article made reference to the institution of the ‘European Citizens’ Initiative’, which entered into force in 2012, and prescribed – with the support of one million EU citizens – that the European Committee require the opening of the procedure of a European referendum. In this article it is formulated the continuous requirement of a ‘global social dialogue’. The dialogue between the citizens and the EU agencies should be transparent, and as a rule its framework and implementation must be established and funded by the EU. However, in order that the provisions of Article 11 be used in practice, it would be necessary to develop a framework and to define additional rules. This could come true by a sort of European Charter, which would define the framework and the content of cooperation between the organisations of the civil society and the institutions of the EU²⁰⁶ and – in addition – it would adjust the concept of the civil society/nonprofit organisations to the requirements of the age.

According to some thinkers, the development of the European civil society and that of its organisation significantly depend on – at the European level – the *sui generis* existence of the legal institutions. E.g. failing to establish the European Association as a legal form considerably hinders the formation of European civil society.

2.2. The concept of nonprofit

While the Marxist approach included the economic institutions in the sphere of civil society, today the nonprofit nature of the civil society organisations has become a commonplace, in this way trying to distinguish the self-organized communities serving a common social (community) need from the profit-oriented companies functioning on the basis of market economy. The differentiation based on the nonprofit status, however, – as we shall see – leads to apparent logical contradictions like the separation of the public and private sectors and the establishment of a wide range of organisations without any actual economic profit. However, the empirical works have also demonstrated the same thing as the sometimes contradictory yet interdepending theories of the nonprofit sector – like the theory of state failure / market failure (Weisbrod), the theory of the failure of contractual relations (Hansmann), the theory of the failure of self-activity (Solomon) – did long time ago, namely that nonprofit organisations become the desirable institutional form not exclusively due to their higher service efficiency.

A relative consensus exists in the Hungarian literature regarding the fact that the nonprofit sector includes only the formalized and institutionalized organisations having a legally defined official status.²⁰⁷ This approach excludes from the nonprofit sector those entities of the civil society that does not have such a status (table associations, movements, etc.). The organisation’s *legal personality* provides better operation, organisational activity and a

²⁰⁶ Dirk Jarré: Az Európai Unió és a civil társadalom. [European Union and Civil Society] *Civil Szemle* 2012/1. 83.

²⁰⁷ Reisinger Adrienn: Civil/nonprofit szervezetek a kohéziós politikában – elméleti alapok. [Civil and non-profit organisations in the cohesion policy – theoretical background] *Tér és Társadalom* [Space and Society] 2012/1. 44.

more adequate structure of controlling hierarchy,²⁰⁸ though only today's modern European people have the way of thinking that any activity should be done in a legal background...²⁰⁹

Several authors include in the list of the nonprofit organisations some of the entities established by the state or by the local governments, thus distinguishing the civil nonprofit and the governmental nonprofit categories, referring to the latter as to *quasi nonprofit organisations*.²¹⁰ This approach – that is relatively general in the national literature – leads to a logical contradiction namely that the sphere of the nonprofit organisations is a subset of the organized civil society and a broader phenomenon at the same time.

However, there are authors who believe that only those organisations belong to the nonprofit sector which serve public objectives as private institutions.²¹¹ According to this approach, governmental nonprofit doesn't even exist.

In today's Hungarian practice, there are two main definitions of the nonprofit sector,²¹² among these definitions **the legal definition** is the broader. According to this, all nonprofit oriented organisations (foundations, public foundations, public law associations, public benefit companies, voluntary mutual insurance funds,²¹³ and social organisations falling under the scope of the association law), which at the same time do not belong to the government sector, are regarded as part of the nonprofit sector, if they are registered as legal entities.²¹⁴

The statistical definition is somewhat stricter and more pragmatic, and it is actually based on the criteria (the prohibition of distributing the profit; organisational independence from the governmental sector; institutionalised status/independent legal entity; public service nature; some elements of volunteerism and the exclusion of a party-like operation) established in international practice.²¹⁵ Although it is not as broad as the legal definition, it is similar in logic since it uses the organisational forms described in the Civil Code as its starting point. According to this definition, the following organisations do not fall under the category of the nonprofit sector: voluntary mutual insurance funds (since the nonprofit-distribution constraint does not prevail in their case), political parties (as their mission is to acquire public and governmental powers), and churches or monasteries (as the regulation that defines the operational framework for secular nonprofit organisations does not apply to them).²¹⁶

²⁰⁸ Bezdán Anikó Judit: The Conceptual Definition of Hunters' Societies. *Journal of Agricultural and Environmental Law* 2011/10. 11. http://epa.oszk.hu/01000/01040/00010/pdf/agra_es_kornyeztjog_EPA01040_2011_10.pdf

²⁰⁹ The non-legal personality variable of associations is known in other countries' legal system, like in German BGB and Italian Codice Civile.

²¹⁰ Reisinger (n 207) 45.

²¹¹ See Szomolányi Zsuzsa: A civil társadalom – határtalanul. [Civil Society – without Frontiers] *Civil Szemle* 2004/1. 140.

²¹² Balogh – Mészáros – Sebestény: Módszer és gyakorlat. A nonprofit statisztika 10 éve: 1992–2002. Nonprofit, Budapest, 2003.

²¹³ For details see Act XCVI of 1993 on the Voluntary Mutual Insurance Funds, as well as Government Decree 268/1997 (XII. 22.) on certain rules of management of voluntary mutual health and self-help funds.

²¹⁴ Renáta Nagy – István Sebestény: Methodological Practice and Practical Methodology: Fifteen Years in Nonprofit Statistics. *Hungarian Statistical Review* (2008) Volume 86, Special Number 12. 118.

²¹⁵ Ibid.

²¹⁶ Ibid.

The organisations of the nonprofit sector can be categorized according to field of their activities, their operational characteristics and legal form by several aspects. From the point of view of the field of their activities, all the organisations, where the prohibition of profit distribution, organisational independence from the governmental sector, institutionalization (independent legal personality), self-governance (self-management, own leadership), and, to some extent, voluntariness and self-activity prevail, can be considered nonprofit organisations.²¹⁷

According to the statistical or narrower definition, from a formal aspect, nonprofit sector includes private foundations, and associations (these are called classical civil organisations), various advocacy groups like professional alliances, employers' and professional organisations, trade unions, public law associations and the quasi nonprofit organisations (public foundations, nonprofit enterprises, and other nonprofit institutions). Since our analysis is essentially based on the data of the Hungarian Central Statistical Office, we will consider these types of organisations as the elements of the sector.²¹⁸

In Hungary, the expression 'nonprofit' is being granted more and more civic rights both in terminology and in everyday language. In legal technical literature, the definition 'nonprofit organisation' is often used as the opposite of economic societies, including foundations, associations, nonprofit societies and civil organisations with their own purpose, e.g. waterworks associations.²¹⁹

We can use the expression *nonprofit* as acknowledged in Éva Kuti's book: *Let's Call It Nonprofit...*, related to their spreading in Hungary, too. 'The expression nonprofit sector may have been granted civic rights because it grasps the most general element of the sector's definition, which is free from ideology at the same time... Using a mathematical metaphor, the least common multiple has not been found, so the greatest common factor has become generally accepted: instead of the expression reflecting the complexity of the sector or the variety of organisations, it refers to the only characteristic in which there is a more or less complete agreement.'²²⁰

'The name 'nonprofit' in use expresses a negative definition. According to the expression, we can assume that it is an organisation without the purpose to obtain economic profit in an economic sense. Furthermore, the expression suggests that the nonprofit sector and the nonprofit organisations cover social forms not belonging to either public or marketing sectors. The description of what a [given] society does not do, or what cannot be a nonprofit organisation, will not give us the information that we wish to know about these organisations [...]. As in all cases of negative definitions, a question is raised here: what is the method of at least roughly describing so many organisations sharing the same characteristics so that they can be examined as independent units?'²²¹

²¹⁷ László Kákai – István Sebestény: The weight of the nonprofit sector and the impact of the economic crisis in Hungary. *Civil Szemle* 2012/3. 116.

²¹⁸ Ibid.

²¹⁹ Bezdán (n 208) 7–8.

²²⁰ Kuti (1998) (n 25) 16.

²²¹ Bezdán (n 208) 8.

According to *Anheier* and *Toepfer* the following conditions must be fulfilled so that an organisation can be called nonprofit:²²²

1. Nonprofit organisations *are civil – not state organisations*. The civil characteristic mainly means that nonprofit organisations are institutionally, that is, structurally separate from the public, governmental (self-governmental) sphere, which takes only legal control over them, even in the case of pecuniary assistance.
2. Nonprofit organisations *are not directed by profit producing purposes, i.e.* nonprofit organisations *may produce profit*, but without distributing it among their members, sponsors or owners. We can find out that this condition does not exclude profit but it determines the way it is used, meaning that the profit must stay in the organisation, it has to be spent on public interest.²²³
3. A further condition of belonging to the nonprofit sector is that nonprofit organisations *must have a certain grade of institutionality*, typical of formal organisations. Institutionality partly means keeping organisations in official records.

Besides institutionality, social organisations have a constitution, and regulations regarding their direction, procedure and operation. Continuous operation is typical of them. *The concept of nonprofit sector organisations would be also insecure and varying without the condition of institutionality, and thus the phenomenon would be inconceivable and impossible to analyze. However, in the system of civil law, all legal subjects have their own self-government, that is, their own organisation operates according to their constituent organs' authoritative distribution.*²²⁴

4. Entities placed among nonprofit organisations must produce a minimal level of *self-administration*. In this sense, the most important decisions (at least formally) take place within the organisation and all kinds of outer control would question the independence of the organisations, from a legal point of view, too.
5. Finally, nonprofit organisations must be at least minimally *voluntary*. This condition is fulfilled when organisations work voluntarily, not only in connection with the activities and the management, but with the grants, too.

Of course, the affiliation and the subsequent involvement in the organisation must always be voluntary, e.g. in the case of associations, exercising the right of association does not exclude the voluntary character of the membership [Act II of 1989, Art. 12 Par. (1) and Par. (2); Art. 3 Par. (1); Art 6 Par. (1)].²²⁵ The situation is slightly different for example in the case of professional chambers (which operate in the form of public corporations); In order to practice a certain profession, chamber membership may be required.

It is essential that in spite of the above mentioned – theoretical – arguments, the term nonprofit organisation in the Hungarian legal system appears only as a non-defined generic

²²² Toepfer, Stefan – Anheier, Helmut: Theorien zur Existenz von Nonprofit Organisationen. In: Hopt – Von Hippel – Walz (eds.): Nonprofit-Organisationen in Recht. Wirtschaft und Gesellschaft, Tübingen, 2005. 49.

²²³ Bezdán (n 208) 9.

²²⁴ Ibid. 11.

²²⁵ BH 2000. 82.

term. Law does not give a precise definition of nonprofit organisations.²²⁶ However, it can be stated that only those nonprofit organizations may be included in this sphere that are primarily carrying out non-business activities, and the task of which is the satisfaction of the legitimate demands of certain sectors of the society that the state cannot, or can only partially meet. According to the classical approach, the concept may be simplified in the following manner: the nonprofit organisation is an entity that doesn't pay dividends (based on members' participation). This approach, for example, excludes the residents' associations from this circuit.

Another approach tries to define this concept from the point of view of organisations pooling farmers that are subject to Act C of 2000 on Accounting (AA) in the case when these organisations are not established for profit-producing purposes. The conceptual circuit also needs to be completed: the list included in the AA must be supplemented by the list of nonprofit public benefit companies and corporations and other organisational forms which may acquire a nonprofit status.

2.3. The concept of civil/nonprofit

As I indicated above (*subchapter 2.1.2.*), the conceptual system of the civil and nonprofit organisations is complex and the two organisational circles partially overlap one another (at least in Hungary), and based on this, it is suggested by some authors that the term civil/nonprofit organisation be used. For example Reisinger classified under the headword civil/nonprofit organisation any form of organisation which was established in part or in full by citizens' will, voluntarily to achieve individual, community, or public goals.²²⁷

3. Characteristics of the civil society in Hungary after 1989, in particular its relationship with the state

Hungarian civil society, to a great extent, shares a common tradition with its Western counterparts, and its legal regulation has basically been the same for the last 20 years. Nevertheless, the living traditions and the actual practice of Hungarian civil society have shown remarkable differences, due partly to the interrupted development of Westernization, and partly to the drastically distorting effects of the changes in the economic and political systems, with their perverse modes of privatization and power concentration.²²⁸ The living

²²⁶ On 1 July 2014, 1134 laws in force mention the word non-profit, but these use the term, either as the part of the phrase non-profit company or without any explanation or content exposition.

²²⁷ Reisinger (n 207) 46.

²²⁸ The formation and development of the Hungarian nonprofit sector are significantly different from the developed countries. The reasons for this are: the different political and economic background factors (e.g. In the period of 1948 and 1988 the restriction of civil voluntary organizations, political influences on the representative organizations of employers and workers, the state monopolies of education, health

Western traditions of Hungarian civil society are today rather restricted, since recent history's progress and setbacks have not allowed for the organic continuity of these traditions.²²⁹

After 20 years of changes in the political system, we can say that a three-sectored economy has been developed in Hungary. In this system civil society operates sometimes in cooperation, sometimes in competition with the state and the for-profit spheres. The Hungarian nonprofit sector has experienced a long and difficult development and has recently been transformed into a widely recognised and lauded actor within the country.²³⁰

The situation of the Hungarian Civil Society can be analysed and evaluated in many ways, one of which is the multi-level governance framework (*see subchapter 1.1.1*). The main aim of this chapter is to collect those facts and processes which have been negatively influencing the involvement of this sector in policy-making since the fall of the iron curtain in Hungary in 1989/1990.

On the one hand, a civil organisation – at its best – creates an institutional channel between society and the state, it transmits the society's needs and interests towards the state, and on the other hand, it forces the state to continuously legitimate itself, and to increase the publicity of its operation.²³¹ Civil society and political state cannot exist without each other, but both try to be superior to the other.²³² Even in a way that it expropriates the traditional institutions and classic territory of the other 'party'...

The organisations of civil society play a strategic role to find the 'golden mean' between the exclusivity of the market and that of the state as they take a special position outside of these, and because they are relatively small, flexible and have special relations with citizens as well, due to their capacity to mobilise 'private forces' to support public purposes.²³³ At the same time as the economic and political significance of these organisations has been increasing, they are keen to interfere in issues that also affect them, hereby changing the roles in political decision-making.

Contemporary civil society in the Visegrad region countries (Czech Republic, Slovakia, Poland and Hungary) particularly reflects the principle of creating initiatives and civil activities from below, coming directly from the citizens and their needs.²³⁴ Civil society is becoming/has become a strong element of new society systems created on the basis of dissolving socialistic establishments.²³⁵ The objective is to fulfil the gap in communication

and social services, then from 1989 the change in the political system) and transformational processes (e.g. The change in the structure of economy and ownership, the underfunded state and municipal institutional systems). According to Bocz, the development of the Hungarian sector was considerably influenced by governmental policy deciding its economic possibilities and the composition of the organizations [Dr. Bocz: A nonprofit szektor magyarországi működését befolyásoló tényezők. [Factors influencing the operation of the Hungarian civil sector] *Statisztikai Szemle* (2010) 88(4) 370.].

²²⁹ BTI 2010 (n 144) 15.

²³⁰ Nagy – Sebestény (n 214) 113.

²³¹ Jagasics (n 188) 5.

²³² Konrád György: Az autonómia kísértése. [Temptation of autonomy] *Antipolitika*, Budapest, 1989. 17.

²³³ Sasvári (n 38) 5.

²³⁴ Sedlakova – Tokolyova (n 204) 36.

²³⁵ *Ibid.* 37.

between citizens and states with civil institutions. Nevertheless, *in many cases their operation is limited in financial resources*.²³⁶

3.1. The most important weaknesses of the Hungarian civil/nonprofit sector

The criteria that will be mentioned in this subchapter are not the items of an exhaustive list. Furthermore, it is important that we should not strictly concentrate on the actors of the civil/nonprofit sector, but to deal with the issue in a broader, social context. This is also important because among the other actors playing role in the formation of the public policies (such as trade unions, political parties) there are many ‘disabled’,²³⁷ which among other things means that the clarity of the delegation, the acceptance, the transparency, the financial strength, etc. and the ‘professionalism of non-civic actors could be improved, too. This fact has a significant impact on the opportunities of the civil/nonprofit sector, as well.

1) Low level of individual activity.

It is an inescapable fact that the Hungarian citizens’ individual – community-oriented, grassroots type – activity is low, and is typically not characterized by affiliation. In Hungary there is a century-old tradition – that goes beyond the socialist era – of lobbying activity based on the individual enforcement of interests.

In order to understand the weakness of the civil society within post-communist Hungary, we need to consider the elements of the social experience of the communist era.²³⁸ One of the most striking features of state-socialist societies was the clear distinction between their formal institutions and the informal behavior of people in everyday life. Every communist country had an intricately organized array of formal organisations having almost the same institutional form.²³⁹

One might think that the disappearance of the communist system and its mass organisations would lead to an outpouring of public participation in new organisations that are truly voluntary and autonomous.²⁴⁰ This is indeed what many analysts expected, especially following the remarkable spontaneous mobilization that brought about communism’s collapse in 1989–91.²⁴¹ But these new opportunities have not brought about an increase in participation; if anything, participation has actually

²³⁶ Ibid.

²³⁷ Ágh Attila: Egy év magány: a reformkormány első éve. [One year of solitude: the first year of the reform government] *Mozgó Világ* 2007/8. 38.

²³⁸ Marc Morjé Howard: *The Weakness of Civil Society in Post-Communist Europe*. Cambridge University Press, 2003. 16.

²³⁹ Ibid. 26.

²⁴⁰ Ibid. 27.

²⁴¹ Guiseppe Di Palma: Legitimation from the Top to Civil Society: Politico-Cultural Change in Eastern Europe. *World Politics* (1991) Vol. 44, No. 3. 49–80.

decreased (!) in the 90's.²⁴² As a direct legacy of the communist experience, most people in post-communist societies strongly mistrusted and avoided joining any kind of formal organisation, even in the newly free and democratic settings.²⁴³

The flip side of the experience of communism – where membership in state-controlled organisations was more a formality, a matter of obligation and expediency rather than deep feelings – was that relationships in the private sphere were extremely meaningful and genuine. Broadly speaking, there were three main reasons for this. **First**, because the formal and public sphere was highly politicized, and also tightly controlled, people could express themselves openly only within close circles of trusted friends and family. **Second**, because of the shortage of goods to buy in communist societies, connections played an essential role, whether the need was for spare parts to fix a car or for products that were rarely available in stores.²⁴⁴ The **third** reason that helps to explain the particularly low levels of public participation in post-communist Europe is the widespread disappointment, and for some even disillusionment, with political and economic developments since the collapse of the state-socialist system.

In the years since those dramatic times, however, many post-communist citizens have felt that they have been let down, even cheated, by the new system that quickly replaced the old one.

In terms of societal change, the new post-communist institutions are still perceived as being more incoherent than authoritative, more alien than familiar, and still very new. As a result, the behavioral patterns in post-communist societies can best be understood by considering the communist institutions and their enduring legacy, rather than by focusing on contemporary institutional designs.²⁴⁵

To sum up: in terms of the low levels of organisational membership in post-communist Europe today, Howard emphasizes three main causal factors, and all three involve people's ongoing reinterpretations of their prior and present experiences. These three factors consist of (1) the prior experiences that people have with organisations, and particularly the legacy of mistrust of all formal organisations, (2) the persistence of informal private networks, which function as a substitute for, or alternative to, formal and public organisations, and (3) the disappointment with the new democratic and capitalist systems of today, which has led many people to avoid the public sphere. As Howard demonstrates, these three factors together present the most persuasive account of the causal link between peoples' interpretations of their prior experiences and their current social behavior and activities.²⁴⁶

There are many voluntary associations in Hungary; numbers are almost at the level seen in Western nations, although the level of real activity is much lower. Many civic associations are in fact formed by business firms expressly to allow tax avoidance, and/or have been politicized and supported by powerful political figures. The

²⁴² Howard (n 238) 27.

²⁴³ Ibid.

²⁴⁴ Ibid. 28.

²⁴⁵ Ibid. 29.

²⁴⁶ Ibid. 30.

latest surveys indicate increasing social polarization in this arena, with a concentration of voluntary associations in the big cities and in the affluent strata of society.

Besides the low individual and community activity in Hungarian civil society, the most embedded domains of civil sector are the protection of the rights of children, and of the disabled people and the implementation of the measures regarding environmental protection²⁴⁷. Fields like education, health, social policy and human rights, civil security and the rights of animals may be considered as embedded areas. In Hungary, the least embedded area is that of the rights of LGBT (lesbian, gay, bisexual and transgender), the international and global affairs and the rights of national minorities. The anti-corruption, the economic policy, consumers' protection and the functioning of democratic institutions are areas that can also be classified as weakly embedded – at least compared to the international standards.²⁴⁸

And what's also important, in many Eastern European countries, the right to freedom of peaceful association is mostly well-functioning. Nevertheless, individuals do not have the right to exert civic control over the state with efficacy comparable to that of associations. The ever-present problem is whether an individual who has no direct interest in a particular case should or should not be allowed to defend other people's interests. In most European countries, only associations have such rights.²⁴⁹

2) The weaknesses of the political parties, of the trade unions and of the civic features of churches in Hungary

In spite of the fact that neither the church nor the parties and trade unions can be included in the narrow circle of NGOs, the strength, the social embeddedness and the complexity of these entities influence and show the power and development of civil society. In particular, the lack of a strong trade union movement is a symptom of the general weakness of the advocacy and lobby abilities of a society.

The transition process towards democracy in Eastern Europe implies a complete overturn of society. It is often referred to as a transformation process. Since the late 80s many scholars have been stating that instead of organizing society from above, the society has to rearrange itself from below. Initiative should now come from citizens, no longer from the authorities only. Actually many successes have been reached according to this democratization process, though, *as previously mentioned*, it took/takes much longer, than it was supposed to take. There are many aspects through which the elements and stages of this transition can be introduced; I would like to address that core issue by showing legal regulation and practical movements of three actors having an important role within this transition in the last two decades

²⁴⁷ The civic control of state activity in the field of environmental protection can be seen as one of the strongest fields of civic activity in Eastern Europe.

²⁴⁸ Arató Krisztina – Nizák Péter: Az érdekérvényesítéssel foglalkozó civil szervezetek társadalmi beágyazódottsága Magyarországon. [The social embeddedness of the civil organisations dealing with advocacy] *Civil Szemle* 2012/2. 7.

²⁴⁹ Julesz, Máté: Civil Society and Environmental Protection. *JURA* 2012/2. 112.

in Hungary. These are churches, political parties and trade unions, influencing each other also in many ways.

Political parties

The social embeddedness of the Hungarian political parties is low. The number of members of registered parties is less than 5% of the adult population in Hungary, and a specific Hungarian phenomenon is that the party members' willingness to pay a membership fee is extremely low compared to the international situation. A few years after the 1989 party founding fever, the citizens turned against the parties and the increasing frustration – at social level – became evident. However, this disillusionment with the political institutions was the factor that had a specific consequence: the civic character of the parties became more accentuated. The actual practitioners of political activities – recognizing that the acceptance of community initiatives lacking any primarily political interest and having 'civil' nature is much larger in the society – tried to hide their activities behind civil goals and to make them acceptable for the political consumers. Since 1992–93, the parties or their members appeared in the role of founders and supporters of more or less formalized NGOs. Right around the time different 'circles' committed to one of the sides came into being and became 'consultative councils', and furthermore, as a result of this process a sui generis form of organisation emerged that was the so-called 'party foundation'.

For example, the FIDESZ (Alliance of Young Democrats) leader Viktor Orbán – even as a member of the political opposition – explained that 'the nation could not be in opposition' and formed the 'civic circles' that were meant to mobilize civil society against the Government.²⁵⁰

These processes and phenomena, of course, characterize not exclusively the post-socialist state development. In Western Europe and North America this has something to do with concern over the erosion of democracy through the apathy and disillusionment of the electorate. The idea of civil society was seen as a way of revitalising democracy. It was clear that fewer people were joining political parties, and more of them joining environmental, peace and human rights groups like Greenpeace.

Aversions related to parties, of course, can be explained not only by abstract causes such as economic restructuring, slow development or by the fact that the evolution of the standard of living for the past 25 years fell off of what most people hoped for in 1989. Negative attitudes towards the parties are due to the lack of the financial transparency, the misuse of party funds, as well as to the low level of political culture, and to the fact that the different social spheres are overpoliticized. The transitology studies have pointed out that the 'Őszöd speech' and the subsequent political events were the factors that truly revealed the weaknesses of the Hungarian elitist democracy, such as the lack of the real civilian control of the political parties and of the state operation in general.²⁵¹

²⁵⁰ Jan-Werner Müller: *The Hungarian Tragedy. Dissent* (2011) Vol. 58, Issue 2, 6.

²⁵¹ Simon János: *Értékválság a politikában. A demokratikus politikai kultúra keresése*. [The crisis of values in the field of politics. Searching for the democratic political culture] L'Harmattan – CEPoliti Kiadó, Budapest, 2012. 114.

It is essential, that neither the political parties, nor the civil entities have become self-sustainable in the last 25 years after the regime change. Building civil society is an endogenous development process. International donors can (and should) create a framework in which a domestic civil society could operate and develop, but cannot yet should refrain from creating civil society themselves. This should be done by local citizens. The same holds true for authorities in these countries. Their role is to promote civil society development by creating a proper legal framework in which civil society can develop itself. States should guarantee the freedom of association for citizens, and create a free market where civil society could secure its own financial resources. This is a particularly sensitive issue since communist governments of Eastern Europe have a legacy of ‘engineering civil society by establishing the so-called “GONGOs” (governmentally organised nongovernmental organisations), which are not at all independent from the state [see more in point 4) of this subchapter]. As far as the political parties are concerned, it was a major problem that a significant part of their revenue was provided entirely directly from public funds till 2014.

Trade Unions

Placing trade unions on the ‘market’ of the entities engaged in the display of individual and collective interests is also important because the legal rules governing them are crucially influenced by the social functions attributed to them by the legislature. Similarly, exploring the ‘civil’ features of the trade unions, finding the possible links with civil society organisations and understanding the true operating characteristics may have significance – that goes beyond trade unions – for the whole socio-political system.

In the time of the regime change the membership of 3 million halved and in the following 10 years it decreased to 960 thousand and today it is down 700 thousand. This number may be even smaller if instead of the record system of the trade unions we rely on the CSO’s data. According to the data provided by this office, the number of the trade union members in Hungary totals up to approximately 550 thousand. The significant decrease of the membership may be explained by the socio-political changes. In the socialist era union membership was compulsory, in addition, the union (the national one) was rather an auxiliary instrument in the hands of the power than an organisation for labor-advocacy, so people are disillusioned with the trade union movement, and now that membership is no longer required, the significant decline of affiliation is natural. But if we look at the indicators of union density in Western European countries, we can see that out there – in spite of the recession – the percentage of union members is much higher than in our area.²⁵²

To some extent the disillusionment is characteristic for the trade unions as well, but in their case the watershed is not the transition period. Compulsory membership before the change of the regime and the negative experiences of privatization in the post-transition period are perhaps the most powerful deterrent forces in Hungary. In the latter respect, it can be said that the trade unions and work councils in Hungary after 1990 appeared rather as the spectators of the events, funded (as well) by the owners and in many cases politically

²⁵² Kárász Andor: Védettek és védtelenek. http://www.demokrata.hu/ujsgcikk/vedettek_es_vedtelenek/ >accessed 5 April 2011

committed to one side or the other, and were present on the scene only as ‘soft’ actors. It is true for Hungary as well, that the traditional and classical – mainly economic – tasks of the trade unions have been taken over in many respects by a highly active civil society functioning through different civil associations. See, for example the National Association of Hungarian Interests (MÉROSZ) an advocacy organisation, which operates as an association and which is designed to display and represent the Hungarian national interests from the perspective of the producers, suppliers and employees.²⁵³

Thus it can be observed, that one of the most characteristic features of the trade unions in our country is that they are maneuvering and – if you like – searching place between politics and civil society.

According to Migács, the trade unions in Hungary for a long time tried to keep equal distance from all political parties (although the sympathies were pretty obvious) and from the non-governmental organisations, trying also to ‘defend’ against the latter their additional rights derived from ‘tripartism’.²⁵⁴ Today, however, it became clear that the ‘[union] can achieve its most serious actions together with the civil sector and the actors of the civil society’.²⁵⁵

Churches

The Act IV of 1990 on the Freedom of Conscience and Religion, and on Churches with all the other related regulations was extremely ‘generous’ regarding both the establishment of churches and their financing, providing both direct (financial benefits) and indirect (through the tax system) financial benefits to the churches. Although after the regime change it was possible that religious communities operate as an association, this form remained residual due to the minimum requirements for the establishment of a Church and to the very attractive financial opportunities compared to an association. This internal rate of the religious sector (about 300 church-status organisations and religious associations with minimal membership) reversed after the legislative changes commenced in 2011, and in 2014 the vast majority of the religious sector organisations operates as an association (see more details about the recent processes later in the chapter).

As far as this sector is concerned, we may say, on the one hand, that a part of the religious organisations in Hungary has functioned as the catalyzers of civil society for the past 25–30 years, while on the other hand, it was evident that these organisations had limited financial resources and thus they depended on the state and on public funding.

²⁵³ Bokor Gabriella: “Közelebb hozni a piacot és magyar termelők érdekeit!” [“Approximating the market with the interest of the Hungarian producers”] In: Simon János (ed.): *Civil társadalom és érdekképviselés Közép-Európában*. [Civil society and advocacy in Central Europe] L’Harmattan – CEPoliti Kiadó, Budapest, 2012. 106.

²⁵⁴ Migács Tibor: A szakszervezeteknek nem a pártok a szövetségesei, hanem a civilek. [The allies of the trade unions are not political parties but civilians] In: Simon János (ed.): *Civil társadalom és érdekképviselés Közép-Európában*. [Civil society and advocacy in Central Europe] L’Harmattan – CEPoliti Kiadó, Budapest, 2012. 113.

²⁵⁵ Ibid.

3) The active civil society as a panacea

As we already referred to in the previous paragraphs, after the change of the regime the idea of active civil society entered in the previously untouchable structures, too.

We must highlight that one of the reasons of the renaissance of civil society is that the market becoming more and more uniform cannot meet the unique and very diverse needs of society, and the problems cannot be completely and effectively solved by the social sub-systems either. Right in these ‘hairlines’ – more exactly in the solving of the actual problems – the increasing of civic participation based on personal contribution – *nota bene*: services – is a good and timely response to facilitate the development of the civil sector. With regard to the civil society each question arises in an especially acute manner in the newly created, two and a half decades old democracy, where the issues related to the state and the relative autonomy of society are not merely a matter of academic argument, but the problem on the agenda of daily political battles.

One of the key elements of the NGO’s cult is that the subjects and their organisations may participate more intensively in the preparation, adoption and implementation of social policy decisions and this will really make the political order and the functioning of the society more democratic.²⁵⁶

In the background one may find the criticism of the overbureaucratized and hierarchically entrenched traditional representative democracy, which is alienated from the people, this criticism being characterized by the spontaneous dynamics of the community and by the promoting of the choices and opportunities for the self-expression of society.²⁵⁷

4) The existence of the semi-public and semi-civil entities

There is a strong connection between the problem discussed in section 3) and the proliferation of the entities with semi-public and semi-civilian character over the past two decades in Hungary.

Since the regime change the ‘state dominance’ principle was predominant in the civilian sector – with different intensity – and as a result, the division, the lack of solidarity and the paternalistic expectations became more and more accentuated. Nonetheless, the government has acknowledged that ‘the time has arrived’ – since enough time has elapsed from the establishment of the status rules elaborated for the organisations – to differentiate management legislation, the theoretical critique of the rules was only slowly followed by the substantive changes of the legislation (even today the expectations towards organisations are not sufficiently differentiated). Until the mid-2000s, almost the same record keeping, taxing and reporting requirements were applied to the organisations having hundreds of thousands HUF income and to those having hundreds of millions.

²⁵⁶ Krémer Balázs: Az NGO kultuszáról. [About the cult of the NGO] *Esély* 1996/2. 45.

²⁵⁷ *Ibid.*

‘The sector is divided and rivalry instead of cooperation became dominant. There is no single model of representation – some umbrella organisations operate’ – underlines Art. 11 of the Strategy Paper of the Government of Hungary on Civil Society. Partnership between the government and the nonprofit sector supposes the existence of a legitimate civil partner representing the sector, and the implementation of this is the task of civil society (Art. 12. of the Strategy).

It was a particular phenomenon in Hungary that the Government – partially due to the weakness of the civil sector – supported the organisations with semi-public and semi-civil character (called quasi civil organisations) in different domains of services and administration.

A semi-public and semi-civil organisation is an organisation established by the state (less frequently by the local government) for the performance of public interest tasks in such a way that the operation is financed partially or totally by the state (government) and the organisation has a high degree of autonomy as far as its finances and the operation are concerned (e.g. public foundations, public entities, nonprofit companies.)

Furthermore, in the case of the organisations that were not created by the state, the state points out in great detail the structure and the tasks of the organisation and regulates their financial and economic operation recognizing their autonomy in substantive issues and constantly supporting them financially – usually on a standardized/normative basis (for example: the minority governments).

Very different standpoints have been developed in the Hungarian literature regarding the features of entities that partly fill the area between the state bodies and the narrower private sphere of the individuals, and the boundaries of certain spheres (state, market and civil etc.). Thinkers and analysts from Tamás Sárközy to Éva Kuti,²⁵⁸ have different opinions and they place the dividing and fault lines elsewhere, but all of them agree that the question is very important also from the aspect of the state’s performance ability.

Until the middle-end of the 2000s the state received serious critique, saying that *‘the efficiency of the state organisation and within that the governmental direction is low because of the hyper proliferation of the background organisations and the constant intention aimed at the creation of half-state fake civil organisations (public foundations, public bodies, public benefit companies)’*.²⁵⁹

The almost unanimous position of the representatives of the Hungarian jurisprudence was in the nineties that the regulation of the public bodies and public

²⁵⁸ ‘10% of non—governmental corporations and associations were founded by the state. In terms of their number, the state controlled and the company-like nonprofit organisations have not gained much ground. Nevertheless, their economic strength enables them to get key positions within the nonprofit sector but they do not take this opportunity. Accordingly, for the time being, this rather service oriented part of the sector practically does not participate in the everyday life of the civil society.’ Éva Kuti: *Civil Europe – Civil Hungary*. European House, Budapest, 2008. 19.

²⁵⁹ Sárközy Tamás: *Kormányzás, civil társadalom, jog*. [Government, civil society and law] Kossuth Kiadó, Budapest 2004. 5.

foundations as public entities, is a foreign element in the Civil Code and that in their case the application of the public regulation is primarily justified – while obtaining concurrently the civil legal personality and the public legal personality is compulsory for these formations. In the transition period, after the change of the regime, the legislation regarding public and private nonprofit institutions was mixed, thus the private nonprofit institutions became disadvantaged (most of the funds were accorded to the public foundations and to the public benefit organisations). On the other hand, the management of the public organisations established on the legal basis of public law got out of the control of the budget. It was also formulated in a number of proposals that the private status of the civil (non-government) nonprofit organisations should be clearly separated from the status of organisations created on the grounds of public law. This differentiation may be done basically according to three main aspects: the person of the founder, the composition of the governing body and the composition of the resources.

While in the '90s and 2000s the majority of the authors have condemned the state overload and the negative effects of the mesosphere, saying that it was weakening civil activity, the compellingness to self-care, etc., today most of the criticism refers to the openly expanding state that draws the public duties to itself. Otherwise, in the latter case it is only that the state – recognising that directly or indirectly it is almost a sole financer in many fields – leaves out local governments and nonprofit organisations from the task fulfilment and financing process.

Apparently a process – serving parallel and the same goals – is going on, in the frames of which the state consciously reorganises the legal status and the subsidy system of the organisations of the civil sphere that have potential roles in the fulfilment of public duties. It is important regarding the civil creations, that

the modifying role of the local governments can decisively affect the future of civil and quasi civil organisations created besides them;

- churches, as the number of financially supported entities that play a role in the fulfilment of public duties has decreased significantly;
- furthermore, such new creations like civil companies²⁶⁰ and social cooperatives – that was created formally earlier, but gained substantial appearance now – received legal status as well (of course the latter is only partially a market actor, but it is a type of organisation complying meeting classic civil criteria and involved e. g. in public labour too.

We have to add that in Hungary the classification of civilians based on specific activity form and activity level (pressure group, QUANGO²⁶¹, national regional, local organisation, etc.) 'does not have much importance, partly because apart from the

²⁶⁰ The legislator introduced this form of association without legal personality in 2011. [Article 578/J paragraph (1) of the Civil Code: Natural persons may establish association for the facilitation of their non-financial interest and for the harmonisation of their community activities without financial contribution (civil association).]

²⁶¹ Quasi Non-governmental Organisation.

chambers they do not have adequate regulations, and partly because theoretically all non-state organisations do all sorts of things'.²⁶²

By the way, we may call the QUANGOs in Hungary GUANGO, with a little word game – by merging the words *guano* and NGO – for as much as this organisation circle was 'layered on' various social needs in a way that beyond a point – the financing and maintenance was made gratuitous – it left them behind, making the aspects of transparency, accountability and efficiency of secondary importance, or sometimes even less.

The feature (previous tendency), according to which the state imitates, reconstructs and substitutes the civil sphere, is weakening, which has already been pointed out in several references. During the analysis of the issue it cannot be disregarded that the economic and sociological literature of the past one-two decades is mainly about that the state by undertaking the 'replacement' and 'simulation' of the market and self-regulating social mechanisms, and particularly the political organisation of the society, ultimately the state itself prevents the political decision processes from meeting the actual interest fragmentation of the society.

Real social autonomies – due to their independence – are at least partly resistant to various external interventions. This – regarding the examined topic – provides an opportunity for the formation of at least two statements: the existence of autonomy – at best – is independent of what forms the institutional separation constituted by law is manifested in, and the existence of autonomies cannot depend on the indirect or direct financial subsidy of the state. So, it is worth stating that besides ensuring e.g. the basic legal conditions of individual and organised common-like practice of religion and the protection guarantees, – in *religious life references in the narrower sense* – the state does not have any further institutional obligations to religious communities operating in any forms in Hungary, and no community can raise expectations towards the state regarding material subsidy, considering *just* its own religious character. In a given case losing the spiritual status²⁶³ and the possible 'total material impossibility' occurring as a result of that cannot be connected formally – even if we are talking about an unjustified withdrawal – since the primary basis of the viability of a civil-like creation cannot be the existence of state financing. The social fields that are viable beyond the need for autonomy have to be able to take care of their own basic means of sustenance besides creating internal regulations, customs and symbols, even when they are increasingly vulnerable and at the mercy of regulations, decisions and other forces coming from the 'bigger' world that surrounds them...²⁶⁴ This logic is not in contradiction with the argument that states as an expectation that *the conscious state places emphasis on the predictable regulating environment and*

²⁶² Krémer (n 256) 50.

²⁶³ See Act C of 2011 on Law on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities.

²⁶⁴ Gunther Teubner: Társadalomirányítás reflexív jog révén. [Social management through reflexive law] In: Cs. Kiss Lajos – Karácsony András (eds.): *A társadalom és a jog autopoietikus felépítése*. [Autopoietical structure of society and law] ELTE, Budapest, 1994. 75.

on working out the set forms of value in terms of commitment that supports the institutions of social solidarity, e.g. through the taxation system, the creation of the public benefit status.

5) Lack of agreement between the Government and the civil sector

In contrast to many Central European states (eg. Croatia, Estonia) in Hungary they failed to reach an agreement between the government and the civil sector.

Compared to other countries, there are several types and levels of agreements established between the public authorities and the actors of the civil society. The most common and the most general types are the contractual relationships characterised by recommendation or program norms. The real significance of the agreement between the government and the civil sector is seen by many in the gesture through which the responsible government declares its intentions to become partner with the nonprofit organisations, and to open in the direction of civil society. Not underestimating the value and the power of the symbolic gesture of the government, the question must clearly be formulated: could an airy legal document with no binding force have a practical benefit beyond the incontestable merit of increasing the willingness to cooperate with the civil sector and developing a new alternative framework for the state-civil society dialogue.

On the basis of the Hungarian²⁶⁵ and foreign²⁶⁶ examples (in some cases only experiments) the compulsory elements of such a document can be clearly defined and the attention can be drawn to what Hungary should concentrate on regarding the future regulations. Such elements are:

- a) the exact definition of the identity of the parties
- b) determining the purpose of the agreement on the principle of partnership; the specification of the framework;
- c) defining the legal character and the nature of the document (potential exclusion of the legal nature);
- d) the schedule for the preparation of the definitive agreement
- e) determination of the minimum institutional guarantees for the cooperation (specifically who and in what way, how often and in which topics will they communicate, consult, harmonize, etc..)
- f) the formulation of common principles

²⁶⁵ Agreement between the Government of the Republic of Hungary and the Hungarian NGOs (The Draft of CEP Working Group, completed with the Governments' amending proposals).

²⁶⁶ Documents like the Cooperation program agreement between the Government of the Republic of Croatia, the NGOs and the non-profit sector (December 2000) and the Agreement between the Government and the voluntary and community organizations in the UK (United Kingdom) may be mentioned. In French there exists a so-called 'Social Agreement' settling the most important rules and obligations. These documents include a common set of principles upon which rests the cooperation and formulate the commitments of the government and civil society in the spirit of partnership.

- g) recording the government's commitments and recording the civilians' commitments²⁶⁷ and finally
- h) recording the rules for the implementation and evaluation.²⁶⁸

Probably the most important question is what kind of practical modalities will be evolved to overcome the differences of opinion between the parties. A substantial part of the foreign examples include a rule in the respect – as the English example shows, for instance, a multi-stage forum system is created: 'If possible, the differences of opinion regarding the implementation of the framework set in the Agreement will be resolved by the parties. In order to facilitate this process – with the consent of both parties – the application of mediation to reach an agreement can be useful, including the involving of a professional mediator, too. Where the behavior transgressing these limits leads to abuses, a complaint to the Parliamentary Commissioner for Administrative Affairs may be handed in. The Government will then consider on the basis of the former experiences, whether the complaints should be affirmed and then rectifies – under the Agreement – the committed errors.'²⁶⁹

In Hungary in the fall of 2002 in the 'Civil Cooperation Programme' a civil working group was established for the development of the agreement between the government and the Hungarian civil NGOs. The draft that was ready in the spring of 2003 was sent to 500 organisations by the Europe House – responsible for the coordination – using the representative civilian address list of the Central Bureau of Statistics. 808 responses were received, of which 100 people have proposed text modifications. 17 organisations disagreed with the basic idea (with the fact of the agreement).²⁷⁰ The Social Policy Cabinet endorsed a proposal for the conclusion of the Agreement, and instructed the Ministry of Labour and the Government Office for the Equality of Chances to engage in further consultation with the representatives of the national associations of civil professionals. The signing of the draft was not concluded, mainly because the organisations working on the civil side, could not ensure the representativeness (the comforting representation of the whole civil side), and they failed to come to an agreement regarding the person/persons who would have signed the document in the name of the civil party.

²⁶⁷ The Croatian agreement foresees the elaboration of a jointly prepared Quality Assurance Guidelines and Rules of Cooperation. It is frequent in the elaboration of ethical codices, too.

²⁶⁸ Thus, for example. 1. The duration of the agreement and the provision that the agreement is being made for an indefinite period; 2. the evaluation of the implementation, at least on a yearly basis; 3. the warranty rules of disagreements' reversal (forum).

²⁶⁹ The cited agreement, p.6.

²⁷⁰ Nemoda István (ed.): Háttéranyag a Kormány és a civil szféra közötti megállapodás előkészítéséhez. [Background documents necessary for the preliminary elaboration of the agreement between the government and the civil sector] FMM Társadalmi Párbeszéd Koordinációs Főosztály és ICSSZEM Civil Kapcsolatok Főosztály tervezete [draft], Budapest, 2005. 14.

3.2. The attitude of the Hungarian civil society towards the state and the public tasks after '89

The broadest meaning of *public task* includes the task of all state organisations, including the Parliament and courts. The state performs its classic (public) tasks mainly through public administration, and examining the issue only from the aspect of public administration, *in a narrower interpretation – and this is what is usually used – we consider as public task performance only the activities ensuring different economic (e.g. provision of water, electricity) and human (education, health, culture, social fields, etc.) public services. This essay extends the usual interpretation, in so far as in our opinion in the broad sense the public administration's public task performance includes, beyond the direct performance of public administration and local governmental tasks set forth in law – related to the provision of public services –, those more general state tasks such as the optimal preparation for decision making relating to public power, the drafting of laws in line with the principles of open legislation, the supervision of the performance and execution of public tasks, the management of an indicator and information system about real social processes, ensuring the innovation necessary for the development of the processes of public task performance.*

It may be generally stated that in the past twenty-five years the catalogue, system of criteria and content of public tasks have been significantly transformed. On the one hand, the scope of community tasks has extended, which appeared in the growth of budgetary, especially social and health care expenses, and, on the other hand (up to the recent past) the role of state-governmental public service providers, who earlier enjoyed a monopoly, decreased, and in parallel with this, decision-making and management procedures have become more open.²⁷¹ The expansion of state tasks (public tasks) – in line with international trends – has been continuous in Hungary in the past few decades, even though in certain periods due to increasing outsourcing, the addressees of laws (responsible for the provision of certain tasks) and the actual performers were significantly different from each other. The expansion, naturally, does not only mean the emergence of new tasks, but also the 'secularization' of certain tasks which had existed before but were trusted to nonprofit organisations due to e.g. their marginal significance (for example, in the 2000s the protection of victims became a state task, even though in the given field the Fehér Gyűrű Kiemelkedően Közhasznú Egyesület [Fehér Gyűrű ('White Ring') Public Benefit Association] had successfully been working before).

Regarding the types of public task performance, it may be stated that

- 1) the primary form is the activity performed in a classic organisational structure, typically with public sector civil servants. This usually targets *public power (authority) type tasks*, which traditionally mean the narrowest terrain of public administration, and the transfer of which is usually unreasonable due to the reasons of

²⁷¹ Péteri Gábor: Költségvetési és piaci megoldások egyensúlya. Területi közszolgáltatások pénzügyi szabályozása. In: Horváth M. Tamás (ed.), Kilengések. Közszolgáltatási változások. [Swings. Public service changes] Dialóg Campus, Budapest-Pécs, 2012. 30.

legal certainty and other guarantees. Among these we may mention the management of public registers, the issuance of permissions and certificates, and especially the direct application of force and sanctioning.

- 2) the second solution is the *establishment of a so-called network of public institutions, primarily as a conscious state (local governmental) step*. The state creates these, because in certain fields due to the lack of expertise and other resources, separating the activities, the organisation and the staff seems to be useful. Traditionally the following may be put into this scope: *a) public utilities (public benefit companies)*, which basically provide for the performance of industrial and trade needs in the form of a business association, and are – more or less – in state or local governmental ownership; *b) public institutions*, which – typically – perform mainly the human public services already mentioned, usually with a staff of public servants, and with non-market price service; *c) public bodies*, which are organisations established by the law, performing public tasks, having their self-government and registered members (such as economic and professional chambers, wine communities, the Hungarian Academy of Sciences, etc.); *d) public foundations*, which are created for the continuous provision of public tasks; and finally *e) nonprofit business associations* (the previous public benefit business association type has been abolished in the Hungarian legal system, and the already existing ones were transformed into nonprofit business associations).

In this context it should be mentioned that the terms *public institution*, *public organisation* and *public utility* existed *mainly* as scientific auxiliary notions until Act CV of 2008 on the legal status and financial management of budgetary organisations formulated them as sub-types of public service provider budgetary organisations. The new institutions created by the law did not prove to be successful;²⁷² theoretical and substantive controversies broke the act down, and it was annulled by Parliament in 2010, returning to the previous – imprecise – regulation of the Public Finances, in this way maintaining the dogmatic problems related to administrative legal personality.

- 3) the third form is the *commissioned public task performance*, which transfers the originally administrative tasks to market (for-profit) or nonprofit (civil) organisations operating in the private sector, based on a contractual relationship. This is often called the ‘outsourcing’ of a task. Regarding contracts, we may traditionally distinguish between task-performance, transfer of public service provision, and concession contracts, as well as the so-called *PPP contracts*. A typical example of the first one is the public education agreement aiming at operating primary schools, while the second is usually used for the realisation of large investments (e.g. highways) and/or for the maintenance or utilisation of the created works, etc., while an example of the third one is dormitory-building construction – proved to be unsuccessful in

²⁷² A novelty of the act was that it expressly appraised public power and public service provider budgetary organisations as separate categories.

Hungary – in which the ownership rights go to the state, but in return for this, it pays a rental fee to the investor in the first 20–30 years.

The common feature of each solution is that the state or the local government financially participates in it, usually based on normative grounds (quota, etc.).

Market organisations are usually business organisations established based on the act on business associations (mainly joint-stock companies and limited liability companies), while civil participants are usually registered as associations, foundations (not the same as public funds), and churches.

It is an important novelty that the previous regulation regarding public benefit organisations²⁷³ has been replaced with the Act CLXXV of 2011 on the right to association, on the status of public benefit and the management and support of civil organisations, which did not strengthen the role of social organisations in the performance of public tasks. The change of financing rules and the introduction of *task financing* does not facilitate the spread of alternative forms, different from state sources.²⁷⁴

In addition to the public task performance of the nonprofit and the private sector, we shall mention as a separate sector the public task performance activities of churches, which are primarily present in the field of human public service provision. In Central-Eastern-European states after the fall of socialism, ideological and material obstacles faded away: therefore the role of churches started to grow in the realisation of community tasks. With the help of their real estate returned to them during the restitution procedures, they relatively quickly established their network of infrastructure, with which churches are able to be present at smaller settlements as the providers of public services.²⁷⁵ In the past few years – starting from 2011 – regulation has become more differentiated regarding public tasks performed by churches in several aspects, which cannot be considered neutral in any way;²⁷⁶ and regarding the attitude of the state it may be considered rather a value choice (financing) model.²⁷⁷

²⁷³ Act CLVI of 1997 on public utility organisations was in effect till 1 January 2012.

²⁷⁴ Horváth M. Tamás: Kiszervezés – visszaszervezés. Változások a magyar helyi közszektorban 2010–12. [Outsourcing – resourcing. Changes in Hungarian local sector 2010–12.] In: Horváth M. Tamás (ed.): *Kilengések. Köszolgáltatási változások*. [Swings. Public service changes.] Dialóg Campus, Budapest-Pécs, 2012. 245.

²⁷⁵ Szilágyi Bernadett: Az egyházi közfeladat-ellátás jogi szabályozása. [The legal regulation of the public task performance of churches] In: Horváth M. Tamás (ed.): *Kilengések. Köszolgáltatási változások*. [Swings. Public service changes.] Dialóg Campus, Budapest-Pécs, 2012. 292.

²⁷⁶ Horváth M. (2012) (n 274) 245.

²⁷⁷ Rixer Ádám: Egyházak és vallási célú egyesületek gazdálkodása. [Financial management of churches and religious associations] In: Antalóczy Péter (ed.): *Az állami egyházjog alapjai*. [Basics of state church law] Patrocinium, Budapest, 2012. 223.

4. The main data of the history and development of civil society/nonprofit sector in the period between 1990 and 2010

4.1. Introduction

The data available in connection with the civil/nonprofit sector are confusingly diverse. Data users often complain, justly, about discrepancies of information coming from various sources. Sometimes the differences are large, therefore it seems to be necessary to start our review by clarifying the definitions and the content issues (*see also Part III, Chapter 2*).²⁷⁸

The regulatory environment of the civil organisations has significantly improved for the last two decades. Though the development of the legal and economic regulations was neither smooth nor fully consistent, it moved in a positive direction. The subsequent regulatory steps may not reflect a firm concept which was carefully thought over, but altogether they still reveal some important tendencies.²⁷⁹

4.2. The main stages of the development of the civil society/nonprofit sector between 1989 and 2010 in Hungary – in the light of the legislation

The multi-religious and ethnically colorful *civic organisations* of Hungary which flourished before the Second World War, began to develop again in the second half of the 1980s after a forty-year Sleeping Beauty's dream. The legal form of a **foundation** goes back to the *Hungarian Civil Code* – and thus to the legal practice of 1987 as the first sign of change. Act II of 1989 on the Right of Association – in accordance with the International Covenant on Civil and Political Rights²⁸⁰ – was a decisive legal milestone of the change in the regimes in 1989.²⁸¹

²⁷⁸ Nagy – Sebestény (n 214) 117.

²⁷⁹ Kuti (1998) (n 25) 13.

²⁸⁰ The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of April 2014, the Covenant has 74 signatories and 168 parties. http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights>accessed 7 November 2014

²⁸¹ Daniel Csanády: Improving Civil Society in Hungary. *The International Journal of Not-for-Profit Law* (1998) Volume 1, Issue 2, 4. http://www.icnl.org/knowledge/ijnl/vol1iss2/art_4.htm
The 'rehabilitation' of foundations came about before the political changes; the legal provisions pertaining to foundations reappeared in the Civil Code in 1987. Moreover, the Parliament also passed the law on association in 1989, thus the legal guarantees of the freedom of association became enacted. In other words, the regulation of the legal status of foundations and associations was already achieved before the change of the political regime. This suggests that the development of civil society was not an outcome of a political process; civil organisations played an active role in the preparation of the changes. Kuti (2008) (n 258) 12.

In the Hungarian law system, there were – from a dogmatic perspective – 2 types of nonprofit legal subjects after the change of regime; legal subjects belonging to the first were regulated by the Civil Code, the other type consisted of legal subjects named by separate laws.²⁸²

There were two basic legal forms (voluntary associations,²⁸³ private foundations²⁸⁴) of classical civil society organisations under Hungarian law during the given period of time. Three other kinds of organisations [1) public law associations,²⁸⁵ 2) public law foundations²⁸⁶

²⁸² Csehi Zoltán: A civil társadalom szervezeteinek joga Magyarországon. [Laws regarding the civil society organizations in Hungary] Gondolat, Budapest, 2007. 32.

²⁸³ Voluntary associations are autonomous membership organisations formed voluntarily for a purpose agreed upon by their members and stated in their founding articles. Associations must have registered members who organised to actively pursue the associations' aims. Although membership organisations are not necessarily called voluntary associations and special laws and government decrees may specify rules for some of them, the basic legal regulation of voluntary associations applies to all such organisations, including societies, clubs, self-help clubs, federations, trade unions, mass organisations, social organisations, etc. These organisations can be formed around common interests, intentions, concerns, hobbies, personal problems, age, residence, profession, occupation or support for particular institutions, ideas, actions. Kuti (2008) (n 258) 17.

²⁸⁴ Foundations are organisations with endowments established to pursue durable public purposes. Their founders can be either private persons or organisations with legal personalities. Unlike associations, foundations do not have members. They are managed by a board. Their founders are not allowed to have a significant influence on the decisions of this board. Private foundations can take several different forms, including operating foundations (e.g. Foundations operating schools, nursing homes, health and cultural institutions; providing social services; publishing books and journals; managing local radio and television stations, etc.); grant seeking foundations exclusively supporting public institutions such as libraries, theatres, museums, schools, universities, hospitals, research institutes that established them or pursuing particular aims and projects such as the creation of monuments, organisation of festivals, or development of art collections; grant-making foundations that support either projects or organisations, and corporate foundations mostly supporting present or former employees of the companies. Kuti (2008) (n 258) 17.

²⁸⁵ Public law associations are self-governing membership organisations, which can only be created by the Parliament through passing a specific law on their establishment. The Hungarian Academy of Sciences, the Chamber of Commerce and the chambers of some professions (such as doctors, lawyers, architects, etc.) have been transformed into public law associations since the creation of this legal form. Although the legal regulation of voluntary associations generally applies to public law associations, the government may vest additional authority over their members in this kind of associations (for instance official registration, quality control, the issue of licences, etc.). Nagy – Sebestény (n 214) 120. With the introduction of the public law association form, legislators presumed that a number of mission-based organizations will more effectively carry out self-management of communities, than the state or the local government agencies does. Although public law associations in all cases have public-service mission, in principle, they are independent of the state and of the local authorities. The elaboration of the public law association system was accompanied neither by the rethinking of the state's and local governments' tasks, and nor by reviewing of the revenues and expenditures of the government.

²⁸⁶ Public law foundations are foundations established to take over some government tasks (e.g. education, health care, public safety, etc.) which are defined in law as government responsibilities. Their founders can only be the Parliament, the Government and the municipalities. (This is the only kind of foundations these organisations can establish, they are not allowed to create private foundations at all.) The public law foundations are kept financially accountable by the State Controller's Office. The founders

and 3) public benefit companies and their successors, the nonprofit companies²⁸⁷) were intended to offer an institutional framework for government related nonprofit activities.²⁸⁸

The most striking of these tendencies are the gradual transition of a loose regulatory framework into a detailed regulation and the diminution in tax advantages. In the early 1990s, the procedures of the court registration were simple and free from bureaucracy. Nonprofit organisations had to meet very few formalised conditions in order to get direct government support; their tax exemption and the tax deductibility of donations to foundations were practically unconditional. The administrative and accounting rules were not fully developed yet. Under the climate of boundless enthusiasm for the newly gained liberties, the disadvantages of a sketchy regulation and the serious dangers of the lack of control over the use of public support and tax privileges were generally neglected. These dangers became known only as a result of various scandals (quick loss of endowment by foundations financed by the state budget, bankruptcy of economically weak nonprofit service providers, tax abuse by fake foundations, service fees disguised as donations) in the first half of the 1990s.²⁸⁹

As a reaction to these problems, the regulation of the nonprofit sector started to change and this process is still not finished. The rules guiding the functioning of civil organisations have become much more detailed, more complicated, and more differentiated; the tax advantages have been cut. The administrative obligations have gradually widened, the transparency and accountability requirements have become much stricter. New, more state controlled legal forms of *not-for-profit organisations* (hereinafter NPOs): **public benefit companies, public law foundations and public law associations** have been created for the nonprofit provision of public goods and the distribution of public funds. All these changes have been accompanied by a decrease in the less transparent indirect state support, especially in the tax deductibility of individual donations and in the tax exemption of the nonprofit organisations' business income not related to their basic, public benefit activities.²⁹⁰

Within the nonprofit sector, already in the first half of the 90s, more and more marked differences appeared between the 'classic' civil organisations (foundations, associations)

can initiate the dissolution of a public law foundation, if they think its function can be more efficiently fulfilled by another type of organisation. The property of the dissolved public law foundation reverts to its founder. Apart from these special provisions, the basic legal regulation of private foundations applies to public law foundations, as well. Kuti (2008) (n 258) 18.

²⁸⁷ Public benefit companies and their successors, the nonprofit companies are private firms which generally produce public goods thus they can get the public benefit status. Their occasional profit cannot be distributed among their owners, managers or employees, it must be used to pursue their public purposes. Apart from the non-distribution constraint, the basic economic regulation of ordinary private firms applies to them. This legal form best fits the nonprofit service providers that cannot reasonably be organised as either foundations or voluntary associations. In some sense, the type of the newly emerging social cooperatives is already an intermediate legal form, halfway between the nonprofit and the for-profit sector. The importance of their membership, their public purposes and their eligibility for the public benefit or even special public benefit status link social cooperatives to the voluntary sector, while the disappearing non-distribution constraint is a point of similarity with the private for-profit corporations. Nagy – Sebestény (n 214) 121.

²⁸⁸ Kuti (2008) (n 258) 17.

²⁸⁹ Ibid. 13.

²⁹⁰ Ibid. 14.

and non civilian (public bodies, public foundations, public benefit companies) organisations. As Anna Bartal highlighted the phenomenon called ‘organisational and resource duality’ basically means that while the number of civil organisations is larger and thus these organisations represent the crucial part of the civil sector, the material and human resources of the sector are increasingly concentrated in the organisations that are not of civil nature.

The process thus began in the first third of the 1990s, when following the adoption of Act XCII of 1993 the new law introduced three more nonprofit legal forms in the Civil Code.²⁹¹ After the codification of the new organisational forms, the nonprofit organisations established on the basis of private initiative became distinguishable (private foundations, associations) from those organisations that were created on the basis of the initiative of the National Assembly, the Government and local governments (public foundations, public entities, public nonprofit companies). Two main goals motivated the legislators to expand the circle of civil organisations with new organisational forms. On the one hand, it was thought that the new organisation groups would have an intermediary role between civil society, the state and the private sector, on the other hand it was believed that establishing them would not only contribute to the greater involvement of civil society, but also would create more favorable conditions – despite the shrinking public resources – to perform public tasks at a higher professional level and more efficiently.

It was the public benefit companies that had the greatest impact on the sector and not the public foundations and public bodies. The latter ones are legal entities engaged in the performance of public utility work that have been created in order to expand the circle of the services provided in nonprofit form. In their authorized functioning there is a nonprofit nature but an important criterion for the civil nature (the self-activity and volunteering) is missing. Their outstanding success in the sector and beyond is partly due to their major advantage over the other actors of the financial market and of the nonprofit sector. Their role in the nonprofit sector is controversial, because a significant part of them have been established by the agencies of the state and of the local governments²⁹² and their functioning is highly dependent on the support received from the state. Since the late 90s a great variety of public benefit companies have been created by the institutions of the state and those of the local government. This was a method to bridge the difficulties created by the downsizing disposed by the central authorities. The nonprofit corporate form (acting as public benefit companies) has facilitated the expansion of their management and support resources (e.g. EU subsidies) too.

However, the controversial role of public companies has been recognized by the government as well, thus the nonprofit corporate form (organisations acting as public benefit companies) were eliminated by the amendment of the Companies Act and of the Civil Code. Pursuant to the Companies Act (Act IV of 2006), after July 1, 2007 no more public benefit companies could have been founded, and the existing ones could have continued their activity up to 2009 by modifying their legal status laid down in their Charters from public benefit company to nonprofit limited liability company or to another kind of nonprofit company, or could have ceased to exist without a successor.

²⁹¹ Kuti (1998) (n 25) 55–61.

²⁹² Between 1996 and 2000, state institutions established at least 70 public benefit companies.

During the often painful economic transition to market economy the state was forced to decrease its budgetary expenses and tighten the *scope of public services* – mainly human services. As the purchasing power of citizens is not expected to increase in the short run, it would not be useful to *privatize* these services to business organisations. NPOs using partly the state and partly private financial resources could provide these services for lower prices. But this kind of privatization of public services was impeded for a long time, because of the lack of a proper legal framework on the transparency and accountability of NPOs. The debates about ‘*public benefit*’ *service-providing* came into the agenda of Hungarian politics after 1995.

‘After the 1996 legislation enabling NPOs opportunity to receive one percent of the personal income tax was adopted, the Hungarian Parliament passed Act CLVI of 1997 on *Public Benefit Organisations* on 15th December 1997. In delivering the Bill to the Parliament, the Hungarian Government demonstrated its interest in strengthening civil organisations. The effect of the legislation, however, rests on the NPOs themselves, whose transparency and accountability is required by the Act, and on the awareness of corporate community, to whom a new ‘covenant type’ tax benefit has been given. Nevertheless, the *implementation phase* will be decisive, because the Act imposes additional work on an overloaded judiciary system. The release of a government decree on NPO related procurement is also necessary.’²⁹³

The tax policy has always tried to differentiate between public benefit organisations and those civil groups which only indirectly serve public purposes though this effort was not explicit in the beginning. At the first stage of development, this differentiation was based on a rough simplification.²⁹⁴ The dividing line was drawn between the foundations and voluntary associations referring to the fact that foundations can only be established in order to serve public purposes while voluntary associations can decide to serve only their own members. Accordingly, the tax treatment of foundations became more advantageous than that of the voluntary associations and other membership organisations. The organisational form as a basis of tax treatment and the system of tax advantages lacking any control of the actual organisational behaviour proved to be increasingly dysfunctional. Thousands of foundations were established (in many cases by voluntary associations in order to raise tax deductible donations for them) in the first half of the 1990s, thus the sphere of organisations enjoying preferential tax treatment increased a lot. This made obvious that the foundation/voluntary association distinction was not an appropriate way of finding the dividing line between public benefit organisations and those voluntary groups which do not directly serve public purposes. The following efforts to develop another solution led to the birth of the law on public benefit organisations in 1998. This law defined the public benefit status, its degrees and the rules of getting registered as a public benefit entity. As a result, the public benefit status became the single most important condition for both preferential tax treatment and direct public support.²⁹⁵

²⁹³ Csanády (n 281) 8.

²⁹⁴ Kuti (2008) (n 258) 13.

²⁹⁵ Ibid. 14.

Finally, another tendency is also worth mentioning. This is the decentralisation and democratization of the decision making process in the distribution of central state support. The two milestones of this process were two laws, one of them on the 1% system in 1996, the other on the creation of the National Civil Fund in 2003. Both of them delegated some part of the government's decision making power to private actors. They authorised taxpayers and elected civil society representatives to distribute a limited part of the budget support among nonprofit organisations. Thus the 1% system and the National Civil Fund enabled nonprofit organisations to get public support through intensive civil participation, in accordance with civil priorities and without endangering their independence from the state.²⁹⁶

The legal forms of nonprofit service provision were also changed within that period of time (after 2005), public law foundations were restricted,²⁹⁷ public benefit companies disappeared while nonprofit companies and social cooperatives started to develop.²⁹⁸

²⁹⁶ Ibid. 14–15.

²⁹⁷ Public foundations were established for the effective performance of the state's and local government tasks, and in order to attract independent financial resources, assuming that the newly established foundations are taking over and would complement the tasks carried out by state and local government institutions. In the future – especially in local governments – the involvement of the public, the obtaining of the citizens' support is to be observed by these organisations, but in fact neither the inclusion of other resources, nor the acquisition of civil support was successful. In the local government sector, the lack of resources and the lack of interest questioned the success of foundations from the very beginning. The central government, however, for a long time provided very favorable conditions for their operation. Governments established such organizations with enthusiasm – not infrequently according to their party preferences – from budgetary resources [all government cycles were characterized by the fact that in the bodies of the public foundations there were experts of the parties being in government, and by the fact that the composition of these bodies varied depending on the election results, (eg. the National Employment Foundation)], and this is of course reflected in the revenue structure of public foundations. The discipline of public foundations' management and the cost-effectiveness of their operation were constantly problematic. Among the public foundations verified by the State Audit Office (SAO) there was hardly any in the case of which the authority would not have found a greater or lesser irregularity and in some cases even fraud. SAO prepared a report in 2005 that showed the reality with an unvarnished honesty: '... According to our studies on the legality and appropriateness of the public foundations we may state the following: Established by the Parliament and the Government the public foundations, contrary to the purpose of their foundation, were almost entirely financed by the central budget. The scope of their establishment – the attraction of the resources different from the state budget, the involvement of the civil sector in the fulfillment of public tasks – was not realized. The decrease of the state's tasks was attempted to be done through the public benefit companies and public foundations, and this meant in many cases that the old structures were preserved without any content analysis or reform of the tasks.'

Act no. LXV of 2006 prohibited the establishment of new public foundations. The regulations related to the existing public foundations became more severe, some of the public foundations established by the state were dissolved or merged: e.g. The National Public Foundation for Disabled Children and Students and the Public Foundation for the Chances of Disabled People were merged and the Public Foundation for the Equality of Chances of Disabled People came into life.

²⁹⁸ Kuti (2008) (n 258) 17.

To be summarised, the legal and economic regulations have created a wide institutional framework and favourable (though not ideal) conditions for the development of civil initiatives and nonprofit service provision since 1989.²⁹⁹

The major and most characteristic new legal instrument which in the next period had a great impact on the transformation and development of the Hungarian civil society can be associated with well-defined developmental stages or 'eras'. Associating most of the above mentioned legal institutions with the different stages of development, according to the relevant literature, we may outline the following division:³⁰⁰

- 1) In the first wave of legislative action after the regime change, the fundamental legal rules were established and the legal forms imposed for both public and civil nonprofit organisations were laid down together with the rules stipulated for their registration. (1987–1993)

1987: the foundation as an institution once again was included in the Civil Code (through the provisions of Decree Law 11 of 1987)

1989: As the Parliament passed Act II of 1989 on the right of Association, and thus the legal guarantees of the freedom of association became enacted, associational life in Hungary took off both qualitatively and quantitatively. It is important that the rules regarding the registration were elaborated in this period of time.³⁰¹ Organisations were mushrooming, their number tripled during the 1990s, and from almost nothing, a foundational sector of nearly 20.000 was born.

1993: Introduction of nonprofit organisations close to the state: new legal forms were created such as public foundations, public benefit companies, public law associations, voluntary mutual insurance funds, and these organisations became day to day actors within a wide range of different fields (Act XCII of 1993).

- 2) In the second wave of legislative actions the regulation regarding the legal operation and the activities of non-profit organizations was developed; in particular, there have been regulations adopted to facilitate the financial stability of the organisations: see for example the 1% law, the public utility law, and Act CXLII of 1997 on the trusting of properties, facilities and real estates to civil society organisations.

1996: The 1% Law is adopted (Act CXXXVI of 1996)

1997: the elaboration of the Act on public utility: instead of the legal form of the organisation, the activities of the organisation became the basis and the subject of the legislation (Act CLVI of 1997).

- 3) The third wave of legislative actions was characterized by the transformation of the relationship with the government and that of the grant system: on the one hand, the

²⁹⁹ Ibid 15.

³⁰⁰ Nagy Renáta: Mérföldkövek a nonprofit szektor történetében. [Milestones in the history of nonprofit sector] *Civil Szemle* 2010/4. 119–120. and Bíró Endre: Hol tartunk? A civil szervezetek jogi szabályozásának problémái. [Where are we? The legal issues of regulations related to civil organisations] Jogismeret Alapítvány, Budapest, 2010. 5.

³⁰¹ Decree of the Minister of Justice 6/1989. (VI. 8.) on the Registration of Public Organisations.

adoption of Strategy Paper of the Government on Civil Society, the – unsuccessful – preparation of the Government – Civil Agreement, the attempts for the involvement of civil society in the legislative process (e.g. through certain provisions of the Act on the Freedom of Electronic Information of 2005), the strengthening of the non-governmental sector through the transparency of public finances, and on the other hand – among others – the establishment and the permanent subtilization of the National Civil Fund Program.

2003: An act is adopted on the National Civil Fund Program (Act L of 2003)

2005: An act on public volunteering is adopted (Act LXXXVIII of 2005)

2006: We can witness the transformation of the nonprofit sector close to the state: new public foundations cannot be established any more (Act V of 2006), and the non-profit corporation (the public benefit company) form is removed from the regulation, instead, the non-profit company is introduced (Act IV of 2006).

2007: Appearance of the social cooperative as a new legal form for public benefit economic activities.

- 4) The elaboration of the Act CLXXV of 2011 on Right of Association, Non-profit Status, and the Operation and Funding of Civil Organisations (*see details in Part VI, Chapter 1*)

4.3. Size and composition of the nonprofit sector between 1990 and 2010

After the transition, the number of the civil organisations multiplied rapidly, the sector kept dynamically and continuously expanding until 1997. This process was mainly due to the intensive spread of the foundations that had been very small in number in the previous era.³⁰² In 1997 the ‘phase of extensive growth’ ended, and between 1998 and 2000 the number of operating organisations hardly changed. Then came a slight increase which was principally due to *membership nonprofit organisations*;³⁰³ foundations were not frequently founded in this period.³⁰⁴

By the end of the decade the number of organisations seemed to have reached a constant level, the nonprofit sector ‘became saturated’, at a level of 65 thousand organisations.³⁰⁵

The number of organisations per 10 thousand inhabitants, which is an indicator suitable for international comparison, increased from 16 to 65, i. e. it quadrupled within 20 years between 1990 and 2010.³⁰⁶

³⁰² László Kákai – István Sebestény: The weight of the nonprofit sector and the impact of the economic crisis in Hungary. *Civil Szemle* 2012/3. 116.

³⁰³ This notion stands for all types of nonprofit organisations except foundations.

³⁰⁴ Kákai – Sebestény (n 302) 116.

³⁰⁵ Ibid.

³⁰⁶ Ibid. 117.

*The number of non-profit organisations in Hungary between 1990 and 2010*³⁰⁷

	Foundations	Associations	F+A
1990	1 865	14 080	15 945
2000	19 700	27 444	47 144
2010	24 000	43 112	67 112

As we have highlighted before, in the analyzed period the Hungarian nonprofit sector consists mainly of private foundations and voluntary associations. These two groups account for nearly nine tenths of the nonprofit organisations. The share of advocacy organisations (which are also registered as voluntary associations) is only 6 percent. State-controlled public law foundations and public law associations and ‘company-like’ nonprofit service providers altogether account for only 7 percent of the nonprofit sector.³⁰⁸

The institutional form most preferred by civil society actors is the ‘voluntary’ association. About half of the nonprofit organisations and more than 85 percent of membership organisations are registered in that legal form. The share of the professional, economic advocacy organisations, employers’ federations and trade unions is meagre.³⁰⁹ This gap between the two kinds of membership organisations can probably be explained by their different background. While the democratisation of the country created favourable conditions for the proliferation of voluntary associations, the transition towards market economy was much less favourable for economic advocacy. The privatisation, the mushrooming of new enterprises (including forced self-employment) and their struggle for survival, the extremely sharp and not always fair competition between the economic actors hindered the development of employers’ federations. The very same factors also had a negative impact on the employees’ side. The ‘fragmentation’ of companies, the emergence of unemployment and the resulting job uncertainties, the endangered existence prevented the employees from forming strong trade unions.³¹⁰

It is all the more important, then, that a large number of private foundations were established despite the economic difficulties even if their endowment was usually very small. Their share, which had been less than 5 percent in 1989, reached 36 percent by 2006. This very quick structural change clearly shows that Hungarian citizens contribute to strengthening civil society in several ways. Besides their community activities, they also play an active role in financing the alleviation of social problems and the provision of welfare services that are important in their judgement. Besides their social participation through membership in voluntary associations, they also use the legal form of foundation for influencing – sometimes as initiators, sometimes as supporters – the development and implementation of social policy.³¹¹

According to the paper entitled ‘Nonprofit Organisations in Hungary in 2010’ published by CSO, in that year 55,5% of all nonprofit organisations and 56,3% of classical

³⁰⁷ Nagy Renáta (n 300) 121.

³⁰⁸ Kuti (2008) (n 258) 18.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Ibid. 19.

nonprofit organisations (associations and foundations) had the status of public or highly public organisation.

4.4. Functions of nonprofit organisations

Not only the size and the composition by legal forms but also the activity structure of the nonprofit sector has fundamentally changed since 1989. None of the activity groups is dominant any longer; the structure has become nearly balanced. The 58.000 nonprofit organisations in 2008 could be broken down into six categories of approximately similar size:³¹²

- 1) Local and economic development, environment 16%;
- 2) Culture, religion, international relations 15%;
- 3) Education, research 16%;
- 4) Health, social care 14%;
- 5) Sports, hobby, recreation 28%;
- 6) Advocacy, human rights 11%.

After 1995 the growth of the sector not only slowed down, but it also became more differentiated.³¹³ The development paths followed by different parts of the nonprofit sector started diverging. *According to Kuti*, tendencies let us identify three different types of growth.³¹⁴ The nonprofit organisations engaged in health care, education and research, economic development, human rights, and social care are characterised by a dynamic and steady growth throughout the whole period. The curves indicate a slowing growth in the field of culture, environment, sports and recreation, international relations, and nonprofit federations. A broken growth is a major feature of economic and professional advocacy organisations and voluntary fire brigades.

5. The financing of civil/non-profit sector in Hungary between 1990 and 2010

As we have already mentioned it above, from the second part of the 90s the nonprofit sector – due to the introduction of new nonprofit forms in the legislation – became more and more polarized and the financial (the subsidies afforded by the state or by the local governments, the incomes deriving from their basic and economic activity) and human (employees) resources got concentrated in the sphere of the organisations with no civil character. From the latter sphere of organisations we must mention the public benefit companies, which in many respects became the catalyzers of the economic growth of the sector. The transformation

³¹² Ibid. 20.

³¹³ Ibid. 15.

³¹⁴ Ibid.

of the supporting basis and the modification of the income structure of the different types of organisations might lead to further inequalities within the sector. The unequal access to the resources offered different chances and opportunities of development for the civil and for the non-civilian organisations and this led to a serious cleavage in this sector in the analyzed period.

5.1. The basic types of financing The forms of civil/nonprofit incomes and funds in the 2000s

In the analyzed 20 years a continuous transformation – if you like: development – of financing could have been observed. We consider that it would be useful to deal with the regulations and institutions elaborated around the turn of the millennium. Withinside each type of income listed in the enumeration below there appear the direct benefits provided by the state and the indirect subsidies offered through the tax system. The incomes characteristic of the analyzed period can be categorized in the following way:

I. Statutory subsidies and incomes (stipulated by the law); compliance with the legal conditions – if the conditions are met, the subsidies are provided automatically.

These are:

- a) benefits provided by named organisations;
- b) in the case of certain services: non-profit organisations engaged in such activity – if they passed the technical and administrative requirements set out in the (budget) law – automatically became eligible for the normative support due to the recipients of the services. If the state recognises the public character of a service that must be funded from the central budget (e.g. legal aid and consultancy), it will not be relevant anymore whether the supplier is a public or a civil organisation;
- c) tax allowances, duties and tariff preference, VAT-refund, amounts deriving from the 1% offered from the personal income tax.³¹⁵

The central government has contributed to the activity of each organisation with an amount specified in the budget law. Such contributions are provided to the Hungarian World Federation and the National Association of Large Families, and to many other public foundations. The contributions provided to the public organisations listed in the budget law were always displayed in the budgetary plan of the sector the activity of which was the closest to the activity of the organisation. Of course, the beneficiaries of these funds must have accounted for these amounts. The ‘party foundations’ established under Act XLVII of 2003 on the foundations assisting the scientific, research and educational activities necessary for the functioning of political parties can be considered as members of this circle, provided that these parties were eligible for the subsidies under Act XXXIII of 1989 (the so-called fund support and mandate proportional additional support).

³¹⁵ Act CXVII of 1995 on Personal Income Tax.

The Parliament in the budget law stipulates normative and other contributions for the operation and maintenance of the institutions of churches (having legal personality), social organisations, foundations, public foundations, national minorities' self-governments, public benefit companies, nonprofit companies, business associations and self-employed professionals (under the law regarding personal income tax) – hereinafter referred to as the operators of civil organisations – fulfilling social, educational, academic, cultural, public functions defined in a separate law (hereinafter referred to as human services).

Non-profit organisations were entitled to tax exemptions and tax credits (e.g. corporate income tax, local taxes), and to customs preferences. We may distinguish the so-called main advantages which include all the 'left incomes' that extend to the broadest range of civil society organisations and those financial advantages and employment benefits that are only available to non-profit organisations.

The amount received by the public benefit organisations as a normative contribution was not taxable. Individuals have had the legal right to transfer 1% of their personal income tax for the benefit of a non-profit organisation.

II. Occasional incomes that are not (necessarily) related to specific individual tasks. These are:

- a) state subsidies (parliament, government ministries, decentralized agencies, extra budgetary funds, budget /target/ appropriations /e.g. an important part of the NCFP resources/)
- b) donations received from individuals and from organisations

Non-profit organisations may also receive subsidies from the government subsystems, typically through tenders. The amount of the subsidies, the terms and manner of accounting was recorded in a written contract. Also the occasional subsidies received by the so-called 'party foundations' according to the provisions of Article 9 paragraph (5) point c) of Act XXXIII of 1989 on the operation and management of the parties are considered to belong to this list.

The government – in addition to the above – supported the non-governmental organisations by conferring them free tenure or usage for capital goods and services and for some real estate goods.

The regulation was less favorable as far as the positive changes in the donation habits of the individuals with higher-income were concerned. Art. 44 Paragraph (3) of the Act on Personal Income Tax (the PIT) specifically excluded the tax preferences of those taxpayers whose income is above HUF 6.500.000.

III. Occasional incomes that are related to specific individual tasks. These are:

- a) based on individual agreements – subject to contracts – with the state (parliament, government, decentralized agencies, state funds) and
- b) the compensation due for the services offered to individuals or to organisations.

IV. Incomes and subsidies based on contribution (membership fees, voluntary work, etc.).

V. Money market incomes, which are created using free cash.

VI. EU funding available for NGOs.

Financial assistance of the European Union was provided to Hungary since 1990: in the framework of the Phare program Hungary received EUR 100–120 million per year to consolidate the market economy, the multi-party system and the democratic institutions – and through the above mentioned goals – a strong civil society, the integration in the EU, and the establishment of the institutions responsible for the fulfillment of the obligations arising from the harmonization of laws and from the state member status. In 2000, as part of the pre-accession preparation in order to receive funding and assistance even after the integration, the ISPA program funding the environmental and infrastructure improvements and the SAPARD program for agricultural and rural development were launched. As an EU member state Hungary could benefit from new forms of support since 2004. At the expense of the so-called Structural Funds and that of the Cohesion Fund, for the period 2004–2006, the EU has offered € 3 billion for Hungary – among other things – to accelerate social progress.

VII. Other incomes, subsidies and discounts (the narrow circle of the benefits with no or with only indirect pecuniary character may be included in this category: for example the possibility of fulfilling civil service at an NGO – a right which is reserved in Art. 30 Paragraph (3) of Act CV of 2004 if ‘the civil service must be fulfilled at an NGO working in the interest of defense’. The latter can be also the National Association of the Reservists, although it is clear that the new rules – limiting qualified military service for the situations laid down in the Constitution – weakened this possibility offered to civilians in the direction of a theoretical construct).

The table below shows in detail a somewhat different structure of the above mentioned types of income:

The incomes of the nonprofit sector according to the sources 2003³¹⁶

The source of the income	The amount of the income expressed in millions of HUF	The distribution of the income %	The number of beneficiary organisations	The proportion of beneficiary organisations
Normative budgetary subsidies	44 729,6	6,1	1 610	3,0
Not normative budgetary subsidies	167 409,2	23,0	7 306	13,8
1% resulting from the PIT	6 663,6	0,9	19 564	36,9

³¹⁶ Nonprofit szervezetek Magyarországon 2003. [Non-profit Organisations in Hungary 2003] KSH, Budapest, 2005.

The source of the income	The amount of the income expressed in millions of HUF	The distribution of the income %	The number of beneficiary organisations	The proportion of beneficiary organisations
Subsidies received from the central funds	36 706,8	5,0	4 344	8,2
The amounts deriving from the refund of the value-added tax	2 756,1	0,4	1 054	2,0
Normative subsidies from the local budget	4 351,6	0,6	458	0,9
Not normative subsidies from the local budget	37 448,6	5,1	13 468	25,4
Ceded business tax	613,2	0,1	813	1,5
Subsidies received from budgetary institutions	8 285,3	1,1	4 909	9,3
Total amount of fund received from the state	308 964,0	42,3	33 882	63,9
Subsidies received from enterprises	36 782,4	5,0	13 529	25,5
Subsidies received from the citizens	13 241,9	1,8	14 727	27,8
Subsidies received from the citizens	30 111,6	4,1	2926	5,5
Subsidies received from nonprofit organisations	14 981,8	2,0	7 935	15,0
Total amount of private funds	95 117,6	13,0	26 773	50,5
Membership fees collected from individuals	15 827,7	2,2	19 258	36,3
Membership fees collected from legal entities	17 134,6	2,3	2 811	5,3
Incomes deriving from the main field of activity received from the state and from the local government	63 830,4	8,7	2 767	5,2
Incomes deriving from the main field of activity received from legal entities and individuals	113 948,2	15,6	10 490	19,8
Total amount of the incomes deriving from the main field of activity	210 740,9	28,2	26 785	50,5
Incomes from interests and interest returns	6 950,4	1,0	28 146	53,1
Financial incomes	16 695,3	2,3	2 391	4,5
The source of the income	86 944,3	11,8	6 424	12,1

The source of the income	The amount of the income expressed in millions of HUF	The distribution of the income %	The number of beneficiary organisations	The proportion of beneficiary organisations
Total amount of the incomes deriving from economic activity	110 590,0	15,1	31 124	58,7
Credits and loans	5 303,1	0,8	1 959	3,7
Other incomes	338,0	0,0	1 492	2,8
<i>Total amount of incomes</i>	731 053,6	100,0	48 991	92,4

5.2. A new institution: The National Civil Fund Program

On 23 June 2003 the Parliament adopted Act L on the National Civil Fund Program (NCFP), which, at the end of a long process, finally gave an answer to the questions related to the 'fate' of the 1% not offered to NGOs. Between 2004 and 2008 the NCFP provided approximately 40 billion HUF for the implementation of more than 60 thousand applications. According to the law, the resources of the NCFP are constituted of the amount which is equal to the sum deriving from the 1% offered and allocated by the citizens from their personal income tax in the previous fiscal year, but the National Assembly in 2007 and 2008, regardless to the sums specified in the text of the law, provided significantly smaller subsidies to the NCFP, limiting the amount of the available sum to 6.8 billion forints. In the following two years the amount of the subsidies was reduced to HUF 7.7 billion, which was cut down in 2011 to 4.2 billion.

The text of the law excluded some categories from the circle of the eligible entities: parties and organisations engaged in direct political activity, have been identified and excluded;

1. the representative bodies of the workers and employers;
2. the associations of the insurance companies;
3. public foundations; and
4. the organisations supported directly from the budget.

Thus, the so-called NCFP support may be provided only to the classical civil organisations and to other social organisations subject to the association law, private foundations and professional organisations.

The NCFP is definitely novel in the sense that the allocation of the amounts of the subsidies is decided by the colleges formed of the elected representatives of civil society organisations, which means that the NCPA's governing body, the Council, is also formed mainly of non-governmental representatives. The NCFP was governed by a body having 17 members (the Council), and the so-called operational organs – which made the decisions – were the Colleges formed of the delegated members of the NGOs. The evaluation of the applications was the responsibility of the NCFP's Colleges. These colleges were organized partly on the basis of regional and partly on the basis of civil professional aspects. The law – at least in its first version – did not have any provisions regarding the structure of the colleges, in this matter, the Council was free to make its own decisions. The Council is the

strategic decision-maker, which sets the priorities and allocates its resources for the various Colleges, and develops rules regarding support.

The experiences of the first years of the NCFP were contradictory. In spite of the 'resource expansion' that had an undoubtedly positive impact on the process, the NCFP's internal contradictions became increasingly visible (the reducing of the amount provided per contest, the high proportion of applications requiring supplementation, the increasing of the subsidies provided to the organisations close to the interest sphere of the decision-makers, the lack of professional monitoring, the increasing number of problems related to the interpretation of the operating costs, the time lags in the process of evaluation, etc.). In the years following the introduction of the program almost 90% of the operating nonprofit organisations would have been entitled to apply for the NCFP funds, but in the first three rounds in 2004 and 2005 only about 12 thousand organisations applied for the subsidies (i.e. in 2004, 23% and in 2005, 21% of all the active organisations). It can be concluded that the application system was disadvantageous for the smaller organisations. This was also underlined by the National Audit Office's Report of 2006, which formulated definite judgments regarding the NCFP's support system and regarding the control and decision-making bodies and the institutions responsible for carrying out the financial assistance. According to the criticism, the Council did not set any evaluation criteria regarding the content, and the support system only partially made it possible to fulfil the goals and the tasks defined in the Act: *'... it created a disadvantage for smaller organisations (...) and (...) did not provide consolidation for the organisations...'*

The first major change occurred after the election in 2010 by the measure through which the Sandor Wekerle Fund Management took control of the NCFP after January the 1st 2011. Later the NCFP ceased to exist.

In summary, we can say that the NCFP's seven years of activity has significantly increased the size of the potential resources allocated to the sector, but the support system could only slightly reduce the inequalities within the sector. There is no long-term strategic concept for the establishment of the resource allocation criteria, and the calculated management was hindered by the requirements imposed by the government regarding the reserves and by the bureaucracy of the bodies involved in the operation.

Part IV

THE TRANSFORMATION OF THE HUNGARIAN LEGAL SYSTEM AFTER 2010

1. Features of the legal system and of the system of social norms in Hungary in the past few years

‘We are obviously living in the age of changes in which law is becoming less the fixer of some agreed tradition. From the duality that, on the one hand, law is the guard of all-time *status quo*, but on the other hand it is one of the tools – at least in silence – of social dynamism and novelties, the latter seems to overcome the other.’³¹⁷ In other words: the two important expectations towards law are great (formal) stability on the one hand, and sensitivity capable of reacting to social interests on the other.³¹⁸

It was especially important for the Hungarian government after 2010 to base its own lawmaking, including the Constitution on a solid, ‘irrefutable’ – *let’s say moral* – foundation because of the extraordinary extent of legal changes. In relation to this handling of the examination of certain (professional) administration fields (politics) as solely regulation questions of legal nature would be a mistake. In social fields regulated by law the presence of other type (level) of normativity is also important; from the rules of everyday social coexistence to the questions of more special responsibility relations settled by political etiquette. The well developed law does not eliminate the *raison d’être* or individual norms, community norms and organisational norms,³¹⁹ as the generality of law can only be realised with the ‘intervention’ of these.³²⁰ Moreover, it was the unsuccessfulness of the previous lobby act that showed that in some fields the state cannot enter with its own additional regulations even in the case of the absence of self-regulation: in certain social spheres a lasting result can only be achieved only through the permanent stimulation of self-regulating mechanisms, which is a slow and difficult solution but without any alternatives. That is why the new lobby regulation – partly – chooses the solution that it only creates mandatory regulations on the side of the public servant that welcomes the lobbyist, and otherwise it is satisfied with creating samples through its own evolving practice on the one hand, and relying on the existence of already created criminal law limits (bribery etc.) As a result, when we examine the nature of law, we have to measure how the above mentioned types of norms differ from law, what interaction they have with law, and up to what extent does the practical use of law depends on the existence and structure of other regulation systems.³²¹

³¹⁷ Varga Csaba: A jog és a jogfilozófia perspektívái a jelen feladatai tükrében. [Perspectives of law and legal philosophy in the light of the present tasks] Állam- és jogtudomány 2008/2. 29.

³¹⁸ Niklas Luhmann: A jog mint szociális rendszer. [Law as social system] In: Cs. Kiss Lajos – Karácsony András (eds.): *A társadalom és a jog autopoietikus felépítése*. [The autopoietical structure of the society and the law] ELTE, Budapest, 1994. 65.

³¹⁹ Especially not the mixture of morality and politics, the convention (see Szigeti Péter – Takács Péter: *A jogállamiság jogelmélete*. [Legal theory of the rule of law] Napvilág Kiadó, Budapest 1998. 117.).

³²⁰ Tamás András (n 65) 145.

³²¹ ”The Nature of Law” /article/ Stanford Encyclopedia of Philosophy, *January 4, 2007* <http://www.google>.

Another important supplement is that the trend-like changes of today's legal life – detectable both in Hungary and abroad and strengthened by crises – emphasise the aspects of *operability* instead of emphasising legality³²², the *rebuilding* of the *state* instead of its *exile*³²³, the *suppression of the processual, negotiated feature of law*³²⁴ and they *need the creation of new public consensus on a social level*.³²⁵ All these intentions cry out for scientific

hu/searchsourceid=navclient&hl=hu&ie=UTF&rlz=1T4PCTC_huHU374HU375&q=An+Outline+of+Contemporary+Legal+Thought>accessed 3 October 2012

³²² The Constitutional Court explained in the 41/2005. (X. 27.) AB decision that it has a function originating from the Constitution in the protection of bodies with autonomy. It clearly pinned down that 'for example a legal regulation that regulates the organisation of local governments in a way that it limits the essential content of the right to form organisations, leads to the emptying of municipal law, to its actual deprivation, and excludes the government making decisions with own responsibility in questions regarding its own organisation cannot be considered constitutional.' Accordingly, for example the autonomous operation of higher education institutions was recognised as a constitutional value by the Constitutional Court. According to constitutional judge László Kiss, who appended a dissenting opinion to the resolution 'it is the state's right and responsibility at the same time for the higher education institution system to be 'operable'. In this – unchanged democratic – approach the operability is more than an institutionalised existence in a way that it makes the everyday life of citizens much more 'liveable'. See in details: Kiss, László: Jogállam és/vagy élhető állam. [Rule of law and/or liveable state] In: A demokrácia deficitje. [Deficit of democracy] PTE ÁJK – Pécs-Baranyai Értelmiségi Egyesület, Pécs, 2008. 142.

³²³ In connection with the state's role the opinions that from the (New) Public Management state concept and the neo-weberian state ideas markedly argue in favour of the latter are getting stronger; for as much as they state that instead of the aspects of cost efficiency, result orientation, etc. and the 'reduction' and 'unattractioning' of the state coming from that and the bigger and bigger outsourcing of the state functions, attempt should be made at the creation of a strong(er) and (more) active state. The newer approaches consider the maintenance of the requirements of the rule of law important, and also the further endorsement of certain efficiency aspects, but they think it is inevitable to substantially involve the elements of strategic thinking and strategic planning in public politics. The believers of a stronger state – who, in the debate about good government and good governance tend to take stronger position in favour of the importance of the former – argue that accountability and responsibility appearing as basic requirements are only possible where a thoroughly rethought strategy of cooperation between the state and the private sphere appears – contrary to, for example, the uncertainty of outsourcing that blurs sharp boundaries.

³²⁴ A reference to the processual nature of law – in the most common and neutral meaning – refers to the process in which from the creation of circumstances providing reasons for lawmaking to the realisation of some specific method of justice, certain life and legal relations are formed, and expanding the frames offered by law. Compared to this neutral conceptual approach, the negatively taken processual nature refers to the exaggeration of law's 'negotiative' feature, and to the deterioration of predictability through that.

³²⁵ The non-revolutionary social – and through that necessarily state – model- and path changes mainly happen because of internal, moral based changes lying on some pact or because of external – typically economic – shock(s). The success of path changes in the 21st century basically depends on the success of keeping the social level knowledge under control that could mean the (personal) centralisation of intelligence and the institutionalisation of the successful concentration of the information at disposal. Another key question of state model changes is the 'setting' and practical application of the feature and measure of state interventions and adequate – not only economic – incentives. The objective regarding the diversification of represented interests appears with special importance in the latter circle; all inten-

and political foundations, moreover – precisely because of the emptying of law, it becoming plastic and unstable and because of the vanishing of the general preventive effect – they have an even bigger wish: they make an attempt to bring morals and law ‘institutionally’ closer, grabbing it as the sole possible alternative. *We have to add that the crisis (crises) of our age is not primarily of economic nature, but rather of moral and ethical nature.*³²⁶

1.1. Giving up the concept of continuous growth and development

Until recently, most of the papers – connected to the various fields of social sciences – takes/took the concepts of predictability, continuous expansion, growth and prosperity for granted – even without expressed mention – as the defining elements of the external environment. Since we carelessly assumed – presuming the relative peace of the past 67 years to be an irrefutable base – that the changes would be considered conjunctural fluctuations at most, like a wave motion, which all in all produces a well predictable and continuous average. This basic standpoint widely observable (and also reflected in legal politics) in social sciences was considered to be general even though a paragraph in connection with crisis management is present – in an almost compulsory way – in the majority of the papers in the past decade. This wasn’t any different in the various fields of legal science either. However, the expansion of the catalogue and tool system of rights made the lawmaker and the practicing lawyer uncautious: the erosion of compulsory verification seemed to have started with the persistence of peace. In the frames of this relativism, neutralism and value pluralism that was feeding on individualism overcame our law, and responsibilities seemed to have become residual items besides rights. Moreover, simultaneously ‘the model – appearing of economic nature on the surface – believed to be the condition of our [economic] prosperity failed’.³²⁷

Phenomena like globalisation, digitalisation, or even individualisation come together with multiplication of risk factors, or with the words of Ulrich Beck, the formation with the ‘global risk society’. The escalation of risks becomes general following the effects of science and technology, in the field of relations between people and groups, social and international relations, and relations between man and nature.³²⁸ In connection with these, the conversation between players, partnership and de facto cooperation are appreciated during severe crises – that of course has consequences appearing in positive law too.³²⁹

tions regarding the involvement of previously underrepresented interests that is aimed at the micro level presentation – and not least at the settlement by law – of the possibility of ‘having a say’ for example.

³²⁶ Vízi E. Szilveszter: “Az erkölcs mindennek az alapja.” [Morality is the foundation of everything] In: Hankiss Elemér – Heltai Péter: *Münchhausen báró kerestetik.* [Searching for Baron Münchhausen] Médiavilág, Budapest, 2009. 363.

³²⁷ Miszlivetz Ferenc: Válság és demokrácia – 1989 öröksége. [Crisis and democracy – the heritage of 1989] In: Simon János (ed.): *Húsz éve szabadon Közép-Európában. Demokrácia, politika, jog.* [Twenty years free in Central-Europe. Democracy, politics, law.] Konrad Adenauer Stiftung, Budapest, 2011. 134.

³²⁸ G. Márkus György: A harmadik út és a globális kapitalizmus megszelídítése. In: Dalos Rimma – Kiss Endre (eds.): *Bal, jobb, harmadik út.* [Left, right, third way] Friedrich Ebert Stiftung, Budapest, 2000. 9.

³²⁹ Miszlivetz (2011) (n 327) 133.

It is slowly outlined that the base for ideas of change regarding regulatory solutions and contents cannot be the idea of prosperity to which the Western law and administration theories have unexpressedly been built on in the past 50–60 years.

1.2. Strengthening of the natural law approach

It is worth noting here that today we can witness the slow strengthening of natural law concepts – interpreted in the broadest sense possible – *again*. In connection with law positivism, which can still be considered to rule the suggestion according to which ‘law as a momentum belonging to a norm and value system, needs the justification of its validity, which is lifelike; and the fact that the changing world of positive experience cannot provide satisfactory justification could be hidden only until the philosophical spirit tied to the one-sided scientific erudition has regained its consciousness’.³³⁰

However, the natural law direction of the legal concept outlined today stands before us as a basically relative natural law argument that is strongly bound both in time and space, for its point of reference is often nothing else than the direct pressure created by a crisis, meaning the financial and other crises going on since 2008.

However, we should not think that the various natural law principles and ways of thinking have penetrated into Hungarian law/legal life in the recent years only; this is a phenomenon that is presumably a process, only the ‘strong thickening’ of which can be observed in the recent period examined by us. Even the Hungarian compensation process was born from the ‘actualisation’ of certain natural law principles after the system change,³³¹ for the partial correction of the previous legitimate decisions could take place only because they were unfair and realised ‘arbitrary deprivation’ in a legitimate way.

The newest natural law – optionally with Christian foundation and content – is new in a way that it does not trace the provisions of the positive law back to the creator of the legal material or the principles strengthened in ‘legal history’ etc. but accepts the general principles and itemised expectations of the – worked out – system of belief, that has a wide social embeddedness – typically the Bible in our culture – as a direct justification and a necessary resultant of a certain regulation. Of course today it is still a hard question to decide whether the references to the identity of God, the relation to him and religious heritage³³² in the domestic and EU laws are just symbolic acts of the legal system appearing as ‘residual items’ or the substantial formers of the legal way of thinking themselves?! Only time can give an answer to the questions but the direction of the change already seems clear. It is conspicuous observing the debate about Fundamental Law that what a great number of references to Christianity and the Christian values appeared in order to support the *raison d’être*

³³⁰ Kecskés Pál: Természetjog. In: Szabó Miklós (ed.): *Natura Iuris*. Bíbor Kiadó, Miskolc, 2002. 220.

³³¹ In details see: Dr. Prugberger Tamás – Dr. Szalma József: A természetjog és polgári jogi kodifikáció. [Natural law and civil law codification] *Magyar Jog* 2003/3. 129–139.

³³² The preamble of Act XLV of 2010. Act on the testimony about National Belonging: ‘We, the Members of the Parliament of the Republic of Hungary, who believe that God is the lord of history, and who try to understand the course of history from other sources, for our country and the whole of the Hungarian nation, in the spirit of our responsibility set in the Constitution (...)’.

of the certain principles and provisions. This particular *ultima ratio* role of Christianity also prevailed in the circle of clearing the concept of historical constitution, and it is not a coincidence either that in the debates that evolved regarding the content of the preamble, the two most often raised – and questioned – elements were religion and the Sacred Crown.³³³

Today, as was mentioned above, – in connection with the role of the state – the opinions that from the (New) Public Management state concept and the *Neo-Weberian* state concept strongly argue in favour of the latter are getting stronger; for as much as they state that instead of the aspects of cost efficiency and result orientation etc. and the ‘dismissal’ and ‘dis-magic’ of the state coming from that, and the bigger and bigger outsourcing of state functions, the creation of a stronger and more active state should be pursued. Since it became more and more common from the ‘70s that various governments financed a wide range of welfare services, but they often assigned for-profit or non-profit organisations to the actual service activity. This way the expansion of welfare care was temporarily available without the substantial increase of bureaucracy.³³⁴ Opinions about the success of the new public management have been different from the ‘80s: some considered it a miracle, while others pointed out that with the introduction of the new theory, the best case scenario is/was the saving of 3% of the costs of public institutions.³³⁵

New approaches also consider the maintenance of the requirements of the rule of law important, and the further enforcement of certain efficiency aspects, but they consider the substantial involvement of the elements of strategic thinking and strategic planning into public politics inevitable. Followers of the strong state – that in the dispute about *good government* and *good governance* take sides more decisively in favour of the importance of the former – argue that *transparency, accountability and responsibility* that appear as basic requirements are only possible where the well rethought strategy of the cooperation between the state and the private sphere appears contrary to the uncertainties of, for example, outsourcing and PPP constructions that dismiss sharp boundaries. PPP constructions proved to be especially unsuccessful in Hungary: the studies prepared by the Development and Methodology Institution of the State Audit Office of Hungary clearly showed that market research necessary for the foundation of the projects and the impact study about the opportunities of implementation were missing in the majority of the cases, moreover, no economic and cost-comparison calculations were made (!); most of the specific constructions did not meet elemental (classic) expectations – that had the state’s interest in view – imposed on PPP investments either, for during such an investment the implementation (construction), availability and operating risks (would have) had to be born by the investor.³³⁶

³³³ See in details: Antal Attila – Novák Zoltán – Szentpéteri Nagy Richárd (eds.): *Az alkotmány arca: preambulum tanulmányok*. [Face of the constitution: preamble studies] L’Harmattan, Budapest, 2011.

³³⁴ Lester M. Salamon: The rise of the non-profit sector. *Foreign Affairs* (1994) Vol. 73, No. 4, 2.

³³⁵ Hosszú Hortenzia: Az állam szerepe a kormányzásban. [The state’s role in governance] In: Hosszú Hortenzia – Gellén Márton(eds.): *Államszerep válság idején* [State role in crisis] COMPLEX Kiadó, Budapest, 2010. 51.

³³⁶ Báger Gusztáv: A köz- és magánszféra együttműködésével kapcsolatos nemzetközi és hazai tapasztalatok. [International and domestic experiences in connection with the cooperation of the public and the private sphere] Állami Számvevőszék Fejlesztési és Módszertani Intézet, Budapest, 2007. 63.

In connection with *good governance* theories it is unavoidable to state that this trend does/did not react to the problems coming from the Western European development, but it is/was an artificial requirement system established for the developing world the primary aim of which is/was the increase of the subsidy absorbing and utilising the capacity of the beneficiary countries, in a way that the 'right' regulation methods of the relationship of the state and the society and the desire for the introduction of appropriate market mechanisms were defined, urging the takeover of the model compatible with the Western democracies.³³⁷ Nevertheless, the expression *good governance* is a construction appearing in the attempts to describe the features of Western countries' economic development.³³⁸

We can state that the 'market turn' reduced to privatisation and outsourcing at the very end of the 20th and the very beginning of the 21st century did not result in real competition in Hungary. 'Public institution monopoly was often replaced by private monopoly. The privatisation of public services resulted in the formation of a client system; outsourcing often became a source of increasing corruption. (...) So, the efficiency of public services was not increased significantly by the application of market mechanisms. The common thesis that private companies are more efficient in public services than public institutions was not justified by practice in any country in the modern world so far.'³³⁹ The embeddedness of these ideas was strengthened by the fact that according to the neoclassical economic perception, the state has to intervene only in the case of services – like home defence, education, public and asset safety, environmental protection etc. – where the market does not operate perfectly or at all. Until recent times it was also presumed in Hungary that the tasks performed by the state are expressly second-class compared to tasks performed by private companies working according to the instructions of the market.³⁴⁰

Of course the 'rediscovery' of the state is not a direction that can be absolutised; if the state has solved all tasks through the central bureaucracy it could hardly avoid critics regarding the totalitarian – and what is at least as important, the less efficient – state. Basically this is the reason why the tasks acknowledged and undertaken by the state are just partly solved by the state itself, according to the principle of subsidiarity, and in many cases the state relies on the help of institutions of the economic and civil sphere and religious institutions.

An important fact that is not closely related to what I have said, is that such forms of state intervention can be possible that do not curb the autonomy enjoyed in the private sphere, but – in certain cases – they expand it. The expansion, centralisation, lets say nationalisation of education, social and healthcare are typically good examples of this. We see this direction being realised in all three fields in Hungary based on the current political commitments and regulation intentions.

Magyary Zoltán Public Administration Development Programme – which was started with the intention of making public administration to be of national nature equal to the previously favoured efficiency aspect – became one of the frames, and the continuously

³³⁷ Hosszú (n 335) 53.

³³⁸ Mark Bevir: *Key Concepts in Governance*. SAGE, Delhi, 2009. 95.

³³⁹ Jenei (n 159) 95–96.

³⁴⁰ Csáki György: *A fejlesztő állam – új felfogásban*. [The developing state – in new perception] In: Csáki György (ed.): *A látható kéz. A fejlesztő állam a globalizációban*. [The visible hand. The developing state in globalisation.] Napvilág Kiadó, Budapest, 2009. 13–14.

renewing and ‘rephrased’ base – beyond public administration – of the Hungarian government’s ideas regarding the good state after 2010.³⁴¹

By today it has become clear also in Hungary that changes within the traditional administrative (public administration) institutional system did not solve the problems alone anywhere. The answer, therefore, is twofold, on the one hand the reinvention of the state is going on (the replanning of the catalogue of public duties and the replanning of the public task performer), on the other hand the performance of public duties, especially public services – which cannot be fitted into the scope of a narrow public administration and system of tools – is realised through organisations, tools and methods with constantly renewing shapes and types.

2. New contents of norms created and maintained by the state

In the examined time period (after 2010) we may have witnessed the appearance, (re)vival, and positioning of notions in the legal system and constant communication – which were hardly interpretable as practical expectations or rules before – such as, among others

- a) patriotism, commitment to the nation;**
- b) state level sense of justice;**
- c) social solidarity;**
- d) in general the shift of attention to natural law thinking; and**
- e) new contents of the meaning of public interest.**

Among the new values and the increasingly protectable aspects we have to mention especially the notion of public interest, the extraordinary role and materially new meaning of which entitles it to be presented – in a catalogized way – in a separate subchapter.

The main directions of the protection of public interest in Hungary – after 2010 – are the following (ones):

ea) Making public finances more transparent and establishing further limits to the use of public funds.

eb) The extension of the notion of public interest.

The regulation (or detailed regulation) of fields from which the state earlier kept out (or which it did not regulate thoroughly) belong to this scope.

eba) An example of this is the inclusion of state support of ‘foreign currency debtors in trouble’ into the scope of public interest, in parallel with the thorough regulation of financial institutions. From the aspect of our topic a significant and at the same time new attempt is Act LXXV of 2011 on

³⁴¹ *Magyary Zoltán Közigazgatás-fejlesztési Program.* [Magyary Zoltán Public administration Development Programme] A Közigazgatási és Igazságügyi Minisztérium kiadványa, Budapest, 2012. 5.

the fixing of the exchange rates used for the calculation of instalments of foreign exchange denominated mortgage loans and the forced sales procedure of residential properties, together with the new act approved in 2011 on the final repayment of foreign currency debts – also on the modification of some acts related to the protection of homes – which provided for the repayment of foreign currency loans at 180 HUF/1 CHF and 250 HUF / 1 EUR exchange rate. The incorporation of idea(s) into an act means that the state, with retroactive force, overwrote the private law contracts made earlier between banks and debtors. On the one hand, there are the requirements of financial stability and legal certainty, while on the other hand, there might be the outlines of some kind of public interest, which, with regard to the significant changes recognised by law which occurred in the circumstances after the conclusion of the contracts – which make the performance of obligations almost impossible – justifies state intervention at unusual degree and depth;

ebb) increased protection of community values

Act XXX of 2012 on Hungarian national values and Hungaricums states in advance that specific collections, national values, and the different level and characteristic of their collections, so-called value bases are established, which present new frameworks in the identification, systematization of national values, in the registration of their data, and in their continuous updating and maintenance.

ebc) the clarification and detailed description of the content of certain responsibilities also belong to this field. As it may be seen below, today's Hungarian law presents the regulation and sanctioning need of the state regarding the individual, the parent, the community, the local government and the state in a much broader scope than before (e.g. introduction of the notion of damages caused with legislation, an increased level of expectations towards parents, etc.).

ec) Limitation of non-essential content of fundamental rights.

eca) Another form, direction of expressing public interest and strengthen the mechanisms for the protection of public interest is the gradually increasing limitation of the 'not significant content' of fundamental rights with respect to public interest.³⁴²

³⁴² In its decision 22/1992. (VI. 10.) AB the Constitutional Court, based on the permanent practice of the body held that 'the limitation of fundamental rights remains within constitutional limits if the limitation is not related to the untouchable essence of the fundamental law, if it is unavoidable, thus if it is forced, moreover, if the weight of limitation is not disproportionate compared to the goal which it aims at achieving.'

ed) Definition of public interest as national interest.

f) New concepts of responsibility

Responsibility for the continuous, constant recognition of the rules of social relations, behaviour in compliance with these; responsibility for behaviour, for its fitting into social relationships; the obligation of commitment for antisocial behaviours.³⁴³

The next feature of today's Hungarian legal system cannot be separated from the – moral – issues which have been repeatedly analysed earlier: the new, system-based concept of responsibility. With some simplification the key issue of conservative and neoconservative paradigm is responsibility, moreover, the revolution of responsibility, contrary to other – previously dominant – concepts absolutising freedom.³⁴⁴

In this new approach the citizen does not appear primarily as the addressee of rights and exemptions or as a consumer, but mainly as a responsible citizen (also in the expectations of laws), which took place in the new laws by the more thorough, more precise and sanctioned definition of different responsibilities.

Let us analyse the separate spheres of responsibility systematically:

fa) Responsibility of the state

fb) Deepening responsibilities through new expectations towards local governments

Within the principles of the new local governmental system the main goal is to increase the responsibility and self-maintaining abilities of local communities, for example through the new public employment system or the limitation of crediting and the prohibition of planning operational loss.³⁴⁵ According to the plans, the introduction of task financing will terminate the past practice according to which local governments considered all tasks 'obligatory'.

fc) Declaration and strengthening of the responsibility of communities, e.g. by the strengthening of social cooperatives:³⁴⁶ motivating communities, initiating self-provision.

fd) Responsibility of market organisations

The topic of market organisations' responsibility taking, and in general the issue of social responsibility taking was limited to the CSR (Corporate Social Responsibility), i.e. the popular topic of social responsibility taking of organisations till

³⁴³ Ibid.

³⁴⁴ Barát Tamás: Felelősség – társadalmi felelősségvállalás. [Responsibility – social responsibility] Társadalom, gazdaság, jog, politika. XXI. Század – Tudományos Közlemények (Ápril 2012) 27., 47.

³⁴⁵ For details see: Hoffman István: Átalakuló önkormányzati vagyon – az alkotmányos szabályok és a sarkalatos törvények tükrében. [Changing local governmental property – in the light of fundamental law rules and cardinal acts] *Jegyző és Közigazgatás* 2012/3. 18–20.

³⁴⁶ For details see: Act X of 2006 on cooperatives and Government Decree 141/2006 (VI. 29.) on social cooperatives.

the near past, and it was used only in a limited sense: it was intended to present donations, charitable activities and sponsorship offering competitive advantage.

A specific field of responsibility of market organisations is the support of culture and within this, sport. Nowadays in Hungary, in the field of culture the financing system consists of several channels: in addition to central and local governmental funds – in forms of direct and indirect (e.g. tax allowances) support – the players of business and civil sectors also take significant part in the support. Without going into details regarding valid laws, I concentrate on examining one significant novelty in this field: from 1 July 2011 a new law entered into force according to which companies and entrepreneurs subject to corporate law may support the so-called ‘spectacular sports’, among them football, up to the level of 70% of their tax amount.³⁴⁷ Through this support football received significant sources for development. However, it is not impossible that this financing model will be introduced in other fields of culture – interpreted in the broadest sense – in the near future.

*fd*a) Within the examined scope, the Hungarian regulations after 2010 established the new form of general and proportionate sharing of taxation – more balanced than before, adjusted to real financial results and possibilities – (also) through the introduction of the so-called extra taxes in 2010 and subsequently in the financial sector, the energy sector and the telecommunication sector.

fe) Increasing the level of individual responsibility

fea) Increasing the level of special (role-related) individual responsibility:

feaa) e.g. within the scope of raising parents’ responsibility Article 9 Paragraph (3) point g) of Act CCXI of 2011 on the protection of families sets out as a parental obligation that the parent shall be obliged to take care of the supervision of the child based on the provisions of a separate law, when the child is in public areas, bars and pubs at night, and according to Paragraph (4) ‘the parent shall spend the support received after the child on the caretaking and bringing up of the child’.

feab) A specific issue which is worth mentioning within the scope of special individual responsibility for the community is that for those applying for state funded or partially funded academic programs starting in September 2012 the conditions of receiving support is to sign a contract which is concluded between the student and the Hungarian state. In this the state undertakes to fully or partially cover the costs of the students’ education (in the form of a full or partial state scholarship),

³⁴⁷ For details see: Article 22/C. of Act LXXXI of 1996 on corporate tax and dividend tax.

while students undertake to earn the degree within a given period of time, and to work in Hungary – within 20 years following the completion of their studies – for a period of time which is the double of the time of studies, thus they ‘commit themselves to work for the Hungarian economy in a certain period of their life’. In the background of this specific and quite new concept there is the consideration that the state finances the education of these students (future professionals), thus it is the ‘obligation’ and responsibility of the beneficiary towards the state and the community to return something from the benefits of his/her work to the environment which supported, ‘educated’ him/her.

feac) Renewal of responsibility for certain past acts: in Act CCX of 2011 on the punishability of crimes against humanity and the exclusion of their limitation period, and the punishment of certain crimes committed in the Communist dictatorship the Parliament confirmed its international law commitment according to which it considers the most serious international crimes exempt from the statute of limitation, and it enacted a law regarding the punishability of certain acts³⁴⁸ committed and not punished in the Communist dictatorship.

There is a question which is raised more sharply than ever, namely that ‘what the content of the normative bond is which motivates people to be loyal to their political community’.³⁴⁹ In order to answer the question we have to step beyond the minimalist and individualist approaches, in which political integration only has instrumental value, i.e. it is described exclusively as a tool of individual good³⁵⁰ because the internal authorisation of legitimate rule of law power – at some degree and in an unchanged way – results from free, natural and necessary subjection, and is based on the free acceptance of/by subjects.³⁵¹ The members of the community, due to their voluntary subjection, have responsibility towards one another for com-

³⁴⁸ In the application of the act a communist crime: crime committed in the Communist dictatorship, which at the time of commission was crime defined in the appendix of the valid criminal code (intentional murder, qualified acts of intentional aggravated battery, forced interrogation, unlawful detention, treachery and treason, treason against the territory of the Hungarian state and harbouring a criminal in relation with the mentioned crimes), which were committed in the name, on behalf or with the approval of the party state and about which no criminal procedure was conducted in the Communist era due to political reasons.

³⁴⁹ Bódig Mátyás: Jogelméleti és politikai filozófiai reflexiók a közérdek problematikájáról. [Legal theory and political-philosophic reflections about the problem of public interest] In: Szamel Katalin (ed.): *Közérdek és közigazgatás*. [Public interest and public administration] MTA Jogtudományi Intézet, Budapest, 2008. 48.

³⁵⁰ Ibid. 49.

³⁵¹ Zlinszky János: A hatalomgyakorlás ellensúlya: Közigazgatási bíróság. [Counterbalance of power: Administrative court] In: Varga Zs. András – Fröhlich Johanna (eds.): *Közérdekvédelem – A közigazgatási bíráskodás múltja és jövője*. [Protection of public interests – Past and future of administrative courts] PPKE JÁK – KIM, Budapest, 2011. 67.

pliance with the jointly established norms, for law abiding behaviour followed in society. There is the obligation described in the old legal principle ‘honeste vivere, neminem laedere, suum cuique tribuere’, i.e. to live decently, not to hurt anyone, to give everyone what they deserve.³⁵² A good state focuses on this, the responsibility towards one another, instead of (in addition to) loyalty towards the state.

g) Institutional transformation of the state

The political-legal analysis of the state's organisation and its institutionalised, traditional elements necessarily requires the review of the system of powers, either with regard to certain branches of power or regarding their ‘effect on each other’, their finely tuned system of relationships. It is not the task of this work to evaluate in details the system of checks and balances existing in Hungary, the realisation and results of the division of power³⁵³ comparing these with requirements defined in Western constitutional law.³⁵⁴ Even though the significant transformation of the legal system – up to a certain degree – is the transformation of the state's organisational system as well, the aims of this paper do not require the introduction of these structures. This subchapter aims ‘only’ to present certain significant changes – which occurred after 2010 – in the field of the traditional branches of power – and specifically in the field of executing power and justice. It has to be definitely stated that even though this work repeatedly refers to the fact that in the examined period within the whole state-political system the number and weight of institutional-legal counterbalances (guarantees) seems to be decreasing, there are counterexamples, as well, which, in certain significant fields, create or renew substantive control mechanisms. Among the latter ones the quasi veto power of the Monetary Council³⁵⁵ may be mentioned, in relation with which the Fundamental Law of Hungary states in Article 44 Paragraph (3) that ‘The adoption of the State Budget Act shall be subject to the prior consent of the Budget Council (...)’. Act CXCIV of 2011 on the economic stability of Hungary adds that draft laws containing the modification of the budget – which would modify the main income or expense numbers of the budget or would increase the rate of budget deficit – may be put on final vote only with the previous consent of the Monetary Council. The significance of this institution is based on the fact that in 2012 one time the Council refused the approval.

In order to answer the above assumption – but at least to shed light on the background legislative goals – it is useful to read one of the most authentic sources,

³⁵² Ibid. 68.

³⁵³ Naturally, Hungary was also affected by different debates, for example by the one which emerged about the contraction or separation of regulatory institutions operating in the field of media and communication. About this see: Rozgonyi Krisztina: Hatóságok konvergenciája: össze vagy vissza? [Convergence of authorities: this or that?] *Infokommunikáció és jog* 2012/3. 127–128.

³⁵⁴ For details see: R. C. Van Caenegem: Bevezetés a nyugati alkotmányjogba. [Introduction to Western constitutional law] Magyar Közlöny Lap- és Könyvkiadó, Budapest, 2008. 33–45.

³⁵⁵ The Monetary Council gives opinion about the draft act on the central budget, but may also give opinion about any issues related to the planning or execution of the budget, the use of public funds and the situation of the public finances.

the opinion of the prime minister of the Hungarian government after 2010, who explained the practical role of the new Fundamental Law as follows: *‘The events of 2006³⁵⁶ made it clear for Hungarians that our constitution – together with all of its modifications – is a constitution of failures, which cannot protect us from anything. It was not able to protect us from total indebtedness, from political lies, abuses of power, from police brutality, from the complete destruction of economy, from speculation [...] In 2006 the Hungarians realised that Hungary was unprotected and that the basic reason for this is the powerless transitional constitution. [...] They came to understand that the renewal of Hungary required a new fundamental law, which provides proper protection for Hungary and for Hungarians, and gives modern answers to the challenges of the 21st century. [...] We missed our self-esteem [before]. Our national self-esteem. We missed to proudly tell everyone who we are, how we are connected, what we want; where we came from and where we are going, what we believe is good and what we consider bad.’³⁵⁷*

³⁵⁶ The speech of Ferenc Gyurcsány, who established government after the elections of 2006, held in front of his peers ‘was leaked’ in the late summer of 2006. In the speech the Prime Minister admitted that they had continuously ‘lied’ for victory at the elections. After the release of the speech the greatest turbulences of Hungarian history from the times of the 1956 revolution took place, among others on 23 October 2006, on the 50th anniversary of the Hungarian revolution and freedom fight.

³⁵⁷ Orbán Viktor: Az újjászületés dokumentuma. [Document of revival] *Magyar Nemzet* 25 April 2011. 6.

Part V

NEW TRENDS IN THE HUNGARIAN CIVIL SOCIETY/NON-PROFIT SECTOR AFTER 2010

1. Introduction

Highlighting the importance of the year 2010 – as some kind of milestone in the transformation of the civil/nonprofit sector in Hungary – is the result of a strong simplification. The phenomena described in this chapter – or at least a considerable part of them – could have been previously observed in fragmentary form, yet, it seems appropriate to use the above mentioned year as a boundary for several reasons:

On the one hand, the completion of the 2008/2009 global financial economic crisis and its transformation into legal institutions affecting civil society and its processes is felt for the first time in 2010³⁵⁸; on the other hand, specifically through the change of the government in 2010 and the adoption of the new constitution in 2011 (Fundamental Law of Hungary), and through the constitutional system not only new institutions, but behind these radically new ways of thinking occurred.

2. Directions of changes, new trends, tendencies and legal responses given to these

The following sections are intended to describe the features that define the contemporary focal points, directions, development tendencies and new trends of the Hungarian civil society/nonprofit sector. This, of course, includes a description and a new categorization of the specific institutions, but this book consciously aims to go beyond the commenting of the new constitution, the new Civil Code³⁵⁹ and of other sectorial legislative framework:

The categorization of these elements that goes beyond the science of law and that uses the methods of other social sciences, too, is also necessary because the presentation and description of the transformation of the legal system as a whole (for example that of the context created by the new Constitution and by the new sectorial legislation and that of the – relatively new – jurisprudence built on these) cannot get us straight in many respects: on the one hand we can also experience transformations, where no changes of legal nature occurred, and on the other hand in some areas there took place or survived tendencies opposite with the express legislative purpose.

From a specifically scientific point of view, this objective is also important because in spite of the fact that the presentation and the analysis of the new legal constellation has been

³⁵⁸ In April 2010, the centre-right Hungarian Civic Union (FIDESZ), in alliance with the Christian Democratic People's Party (KDNP), was elected as the new government of Hungary with a two-thirds majority. The government promised radical changes in policies and economics and dynamic decision-making characterised its work in the first two years.

³⁵⁹ Act V of 2013 on the Civil Code.

done in the Hungarian literature³⁶⁰ in a more or less complex way, the systematic review of the sector as a whole – not only its legal changes – has not yet been completed.

We believe that the following eight issues can be considered relevant for the accessibility and the adequate interpretation – according to their severity – of the real processes of civil society/nonprofit sector in Hungary:

- 1) The rearrangement of the organization forms of civil society, especially as a consequence of the new developments in information technology (the appearance of the Internet communities, and as a result, the spread of the flash mob-type organization forms, etc.).
- 2) The emergence and the strengthening of the new civil and ‘borderline’ types of organizations (community foundations, social cooperative societies), and the accentuation of their economic aspects parallel with the crisis.
- 3) State rearrangement of certain organizational forms that had a strong impact – sometimes at the expense of each other – on their access to budget allocations (e.g. changing the proportion of churches and religious associations through government instruments).
- 4) The appearance of new spatial dimensions (interpreted in geographical, administrative and political terms): a) the gated communities (the scene of civil society that did not exist before: a ‘breeding ground’ of this sector), b) regional, cross-border civil partnerships; and c) the cross-border Hungarian civil society as a new aspect of Hungarian public policy.
- 5) The appearance of new civilian areas of activity: e.g. the demand of the civilians to influence various aspects of the living conditions that they did not deal with before (the emergence of law enforcement-type activities).
- 6) As the exact opposite of the former point the state enters areas that traditionally have civil character: e.g. it enters the victim’s protection domain (which was not dominant after the regime change), or it takes on new types of organizational functions.
- 7) The increased activity of new civil society groups: the first steps of Roma civil society.
- 8) The cataloging of the most commonly raised civil related issues of the thematic discourse shows us a more or less versatile map of the real problem. The significance of this issue is increased, for example, by the fact that the success of the public policy can be measured by the extent to which it directs the civilians towards the areas that are of strategic importance in the medium term for them (the Roma issue, the formation of semi-desert climate, the tasks related to the demographic trends etc.).

3. Informational civil society in Hungary

When the main characteristics of Hungarian informational civil society are analyzed, our first task is to overview the context of universality and of globalization. In the global context in which the birth of the Hungarian informational civil society took place, there can

³⁶⁰ Rixer Ádám: Features of the Hungarian Legal System after 2010. Patrocinium, Budapest, 2012.

undoubtedly be found historical and technical aspects as well: the former refers to the role of the NGOs of Western origin or of other civil organizations of at least regional significance in the development of Hungarian informational civil society in the post-transition period involving financial and technical aid and the transfer of the know-how that led to the launching of the first databases, cooperations, developments in the information technology of the sector. The latter element refers to the context in which today it is inevitable to appear in the global arenas as a result of the cross-border information technology.

There is no single agreed-upon definition of the term 'global civil society'.³⁶¹ The phrase takes on different meanings depending on its use by various researchers in a variety of academic disciplines. In this place we don't consider necessary to define this concept.³⁶² There is not only one single trend in post-modern and globalized 'world society', but a vast diversity of trends, which may prevail in many directions and in many ways.³⁶³ The real, practical question is, of course, whether the prevailing trends of the globalizing world – the networking, the decentralization, the spread of civil society networks – are present in today's Hungary, in the early 21st century? And how the latest trends and the centralizing effects influence these tendencies?³⁶⁴

Civil society and the non-profit spheres in a world called 'networking world' and the 'society of mobile knowledge' mediated by the electronic media, will continue to be within the forefront of scientific interest, as the very unstable, flux-like, 'ephemeral' sector becomes appreciated right next to the crisis of the state and that of the economy due to the fact that the stable values that they represent continue to have an important role in contouring of new global social space.³⁶⁵

The precondition for a global civil society is the existence of cross-border issues and flexible social groups organized in accordance with them. We find that the primary means of this organizational form, and at the same time its scene, is modern information technology and the new media created by it. At the same time, these play an important role in the process in which civilians perceive, convey, explore and capture problems with no direct global character. The strength of global civil society lies in its ability to call powerholders to account by requiring transparency and by disseminating information about their activities.³⁶⁶

Hungary has joined the 'global information age', so the future of civil society can be dealt with only if we clear up what now Central European and Hungarian informational societies are like.³⁶⁷ The following criteria and characteristics seem to be the most relevant:

³⁶¹ Taylor Rupert. Interpreting Global Civil Society. *Voluntas* (December 2002) Vol. 13. 339–47.

³⁶² For details regarding the connections of globalization and civil society see Miszlivetz Ferenc: A demokrácia és a civil társadalom átalakulása a globális térben. [The transformation of democracy and of civil society in the global space] *Civil Szemle* 2012/1. 62–83.

³⁶³ Szabó Máté: Globális civil társadalom. [Global civil society] *Civil Szemle* 2012/2. 64.

³⁶⁴ Ibid. 63.

³⁶⁵ Szabó Máté: Civil társadalom–globalizáció–regionalizmus (2.). Az új kommunikációs technológiák és a regionális civil társadalom globális integrációjának esélyei: Magyarország és a "globális civil társadalom". [Civil society – Globalization – Regionalism (2.). The chances of the global integration of the regional civil society and those of the new communication technologies] *Magyar Kisebbség* 2003/2–3. 388.

³⁶⁶ Judy P. Jensen: Whose Rules? ISES Füzetek, TETI, Szombathely-Kőszeg, 2008. 37.

³⁶⁷ Varga Csaba: Civil társadalom az információs társadalomban. [Civil society within information society] <http://data.civil>accessed 24 February 2013>

A) Civilians supply information where the legislative and the executive processes require this or extort them to

The efficient spread of information still requires certain hierarchy. This is true for the information which has some social and political character and for those that carry political opinions, wills, goals, and criticisms. It is not possible – even in a non-governmental organization – to talk and discuss everything with everyone or to put everything to vote, since thus nothing would happen and no decisions would be made. The principle of representation itself is mostly based on the ‘hierarchy of information’: we choose our representatives on the basis of their program regarding their involvement in the life of the society and on the basis of their political, moral and human references. Critics regarding alienation show that in this mechanism there is too much distance between the voter and the political representatives, and the actual social intentions cannot reach the representatives. Once it is impossible to ask everyone regarding everything and to constantly organise referendums, an attractive option would be that related to certain political decisions those who are affected by the decision would be given the possibility to choose.³⁶⁸ Regarding this issue the organised civil society using modern informational technologies will have an important role.

An important political function of the civil society built of non-governmental organizations could be the providing of social publicity, the composition of which may vary but the amount of which remains manageable for the multi-directional flow of information.

In Hungary, we may see that civilians’ role in the wording and disclosing of interests is manifested in an exclusively reactive form. By this we mean that in the process of the political will-formation there are available tools – guaranteed by law – to ask the opinion of the civilians (and of those whom they represent) (see, for example, the institution of preliminary impact assessment, the compulsory presentation of the opinion regarding the drafts of the legislative provisions) but in practice even the most important laws are adopted without the involvement of those who will be affected by the provisions of the law, or with the merely formal involvement of the affected categories (not taking into account their suggestions at all). *We may say that the legal environment in Hungary is still better developed than the political and administrative culture operating it*³⁶⁹.

³⁶⁸ Krémer (n 256) 46.

³⁶⁹ Following the more conscious reflection on the base units of the construction of sociality (in social studies), the formulation of the ‘role’ category had a crucial importance in the exploration of the reasons for the weakening of cohesion and solidarity. Based on Georg Simmel the ‘role’ category allows us not to base the certain comprehensive social formations on the people that participate in them with actions, but to formulate them on the line of the roles that represent only a slice of their personality. Modernising societies create more and more relations – on which such comprehensive social creations were organised – in which the participants become important from one aspect only, and their whole personality remains outside of these creations. The single individual participates more and more in specialised roles – by the disciplined suppression of the other parts of his personality – in modern societies and the dramatically increased complexity of society is based on such social organisations performed in disciplined roles. Pokol Béla: A professzionális intézményrendszerek

Accordingly, the typically reactive civil activity means that the civilian actors often may start up their activity for the involvement of the interested categories – by organizing public forums and Facebook groups and by transmitting their opinions to the decision makers – only after the adopted laws have been published. A good example is Act CXLVIII of 2013 on Normafa Park (a sports area of historical significance) Annex no. 1 of which marked a large ski area in District XII of Budapest without any impact assessment and prior substantive consultation with the local residents or with the representatives of the numerous local environmental NGOs.

B) It is difficult to establish the actual weight of the civil actors in the new spaces

From the issues mentioned above, it also follows that the faster response capacity may become the source of the virtual substantive difficulties. One of the essential characteristics of today's society and that of the global 'world society' is that the individuals do not appear with their complete personality, but only with one of its aspects in the isolated and often virtual scenes and spaces of social publicity. Based on the analogy of the people living through their roles, a new concept should be introduced, the concept of civil society existing by playing different roles. This does not suggest that the NGOs or their members would at the same time have more 'commitments', but it suggests the uncertainty factor that is the result of the partially faceless and impersonal forums, groups, and other formations offering limited personal involvement and having scarcely any substantive responsibility. According to Albrow, 'the strength of global movements is based on the fact that everyday people with a bit of extra time and energy all around the world freely decide to support the common cause'.³⁷⁰ However, this fact (the easy access to the possibility of expressing opinions) may revitalise the 'value' of the actors having a civil character, preferring in every respect mass characters.

The innovative 'comparative advantage' of the movements and organizations that necessarily use global assets as well lies in the same issue as the source of their disadvantages. The lack of durable homogeneity and the loose coordination through the appropriate channels give them at the same time a fast-reacting role that is complementary to the global and national institutions and impede the development of a clearly defined circle of supporters and the emergence of an effective and democratic control.³⁷¹ This is also closely related to the modern 'society of knowledge' in which the stored information can be processed anywhere and through the universal accessibility it disrupts the earlier structures of social wisdom and authority – largely based on the predictability and on the personal character.

The net has also become a sphere of new constellations of social relationships and social networking which are neither politically nor economically motivated. You can see this in the expansion of such sites and services as Facebook and MeetUp. One

elmélete. [Theory of professional institution systems] Felsőoktatási Koordinációs Iroda, Budapest, 1992. 218.

³⁷⁰ Szabó Máté (ed.): Globális civil társadalom? [Global Civil Society?] Villányi úti könyvek 21., ÁVF, Budapest, 2000. 16–17.

³⁷¹ Ibid. 26.

question that arises is whether virtual communities can really constitute the basis for new forms of community in the digitalized age?³⁷²

The era of participatory media provides challenges and opportunities, but also dangers. The designation of a potential global public sphere connoting forms of global communicational life (as opposed to the designation of civil society with associational life) has been especially influential in media studies. This generates a lot of debate about democratic participation and its limits in the new, globalized media and communication spaces.³⁷³

C) The relations of the media with civilians has underwent some major transformations

In technical terms, the concept of 'civil society of information' is inseparable from the issues related to the media. At the end of the eighties, the fledgling civil society organizations searched for electronic media besides traditional media for their self-expression. In the early nineties, the media activists of Tilos Radio and of other pirate radio stations represented the demand for direct manifestations of civil society in the world of electronic media. This demand cannot be met by either the public service or by the commercial media. The act on media provides the possibility to establish nonprofit media belonging to the so called third sector of media and this gives rise to the possibility of satisfying the above mentioned requirement. In other words, as the result of the activity of the self-organizing civil society, including lobbying by pirate radio stations, the legislature has created the concept of nonprofit media, thus opening space for the emergence of the third media sector in addition to public and commercial media³⁷⁴.

Of course, the relationship of the media with the civilians is not only a juristical issue: the availability of the civilians' opinion in wider circles depends on a number of other considerations, too. For example: after that, in early 2014 on RTL Klub the state imposed a new tax, the channel started to show – to an extent never seen before – the problems and complaints of the civilians and committed itself to the continuous 'monitoring' of individual cases, too.

D) The expansion of legal aid organizations can be observed

This revolutionary change, facilitated by technology and communication, has opened up traditionally closed societies to an unprecedented extent.³⁷⁵ The newly evolving structures of global civil society and those of publicity contribute to the universal and global implementation of the provisions regarding human rights. Through the mediation of the international media – and the civilians supplying them with news – the violations of rights become visible everywhere, and they cannot be hidden from groups fighting for global human rights. The world is becoming more transparent,

³⁷² Jensen (n 365) 33.

³⁷³ Ibid.

³⁷⁴ Cseh – Sükösd: Médiajog és médiapolitika Magyarországon. [Media law and media policy in Hungary] Új Mandátum Kiadó, Budapest, 1999. 18–19.

³⁷⁵ Jensen (n 365) 28.

and as a result, we are faced not only with the human rights and humanitarian issues of our own society.³⁷⁶ The global spread of informational and communication technologies has not primarily led to the increase of state control over individuals, but has enhanced the individuals' and communities' control over the state. This process increases the communication capacity of social groups, the willingness of the citizens to use judicial institutions and increases the long-term demand and raises the possibility for the development of stable civil structures.

One of the most constant and highest priority areas of the civilians' right to defend their aspirations is the media itself and exploring the impact that the legislative has on the different media, in some cases bound together with protests.³⁷⁷ One of the most intense protests with international civil participation was against the Media Act of 2010 (Act CLXXXVI) and its subsequent amendments. Hungarian rights organisations, such as the Association for Human Rights (TASZ), and the Eötvös Károly Institute, analysed the law and found it highly problematic. A new movement, One Million for the Freedom of Press, which started on Facebook, also questioned the law. The group acquired more than 80,000 members by March of the next year and has already organised several 'real' demonstrations, attended by 5,000 to 30,000 people.³⁷⁸

E) E-administration plays an important role in the development of informational civil society

The objective of introducing e-administration in Hungary is to establish/create a modern, efficient state focusing on the interests and comfort of the population instead of the old, slow, sometimes bureaucratic state. E-administration may result in a higher level of client satisfaction, a change of approach, cost efficiency, the improvement of the quality of services, and the automatisisation of procedures – as referred to by the *2010 e-Government* action plan of the European Commission.

Regarding the question of how well the information society and public administration in general are developed in Hungary, several indexes have been established [the former one is usually assessed from the integrated data of the level of WEB services,³⁷⁹ the features of the ICT telecommunication infrastructure and the quality of human resources, while regarding public administration, the extremely complex figures (e.g. DBI, WGI, WCI, EFI, PERF)³⁸⁰ are often described as the summary of dozens of aspects among which the ones measuring the possibilities of electronic administration are becoming more and more significant]. In the EU context, Hungary is somewhere below average.

³⁷⁶ Szabó M. (2000) (n 370) 88.

³⁷⁷ For details see: András Koltay: The Development of Freedom of the Media in a Newborn Democracy: The Hungarian Perspective. *Journal of Media Law* (July 2010) Vol. 2, Issue 1, 25–41.

³⁷⁸ <http://www.eurofound.europa.eu/eiro/2010/12/articles/hu1012011i.htm>>accessed 5 May 2014

³⁷⁹ Ibid 9.

³⁸⁰ Budai Balázs Benjámin: A közigazgatás és az elektronikus közigazgatási fejlesztések hatékonyságának mérése napjainkban. [Measuring the effectiveness of public administration and that of electronic public administrative developments nowadays] *Új Magyar Közigazgatás* (2010) 2(5) 15.

In Hungary the theoretical³⁸¹ and practical³⁸² frameworks of electronic administration are established, even though – especially in the field of data protection – they require further development.³⁸³ In case we look for break-out points, presently the exploitation of technological opportunities lying in mobile devices (establishment of m-government), the establishment of the possibilities of communication through digital interactive television (establishment of t-communication), the extension of electronic signature, the establishment of Internet voting and the issue of outsourcing electronic public services must be definitely mentioned.³⁸⁴

The State Reform Operative Programme (ÁROP) 1.2.10 project aimed to review the regulatory environment of online administration for the comfort and protection of clients. Among the results of the project phase which ended in the summer of 2013, the formulation of specific recommendations may be mentioned regarding the shortening of administrative deadlines, unified opening hours, online client services, more simple identification and smoother administration without difficulties. In the Magyar Zoltán Public Administration Development Programme the extension of the scope of online administrative services and the improvement of their quality is very important.³⁸⁵

F) Civilians' awareness of the opportunities offered by information technology

In this respect only indirect data are available, but in any case, an interesting response was given by the participants in a survey regarding the law on civil society: of the 138 respondents (all respondents were from the circle of associations and foundations) 25 people answered that they knew associations where the electronic meeting functioned, so in this case the ratio is less than one-fifth, it is 18%.³⁸⁶ This fact indicates that the spread of Internet offers further opportunities for the civil actors, too.

³⁸¹ Basic principles of electronic administration are defined by Article 160 of the Ket.

³⁸² For example the Ket made online administration equal to traditional administration, the notion of services related to electronic administration was introduced [Article 172 section d) of the Ket.] and the relevant execution decrees have been prepared; furthermore, the Central Online Service System has been established and the act regulating the freedom of online information has been enacted. Certain important rules of online administration – among others – are contained in chapter X of the Ket. modified by Act CLXXIV of 2011, in Act CXII of 2011 on the right to information self-determination, and in Government Decree 83/2012. (IV. 21.) on regulated online administrative services and services to be provided by the state, Government Decree 84/2012. (IV. 21.) on the appointment of certain organisations related to online administration, and in Government Decree 85/2012. (IV. 21.) on the detailed rules of online administration.

³⁸³ Balázs István: Magyarország közigazgatása. [The public administration of Hungary] In: Szamel Katalin et al. (eds.): *Az Európai Unió tagállamainak közigazgatása*. [Public administration of the member states of the European Union] COMPLEX, Budapest, 2011. 754.

³⁸⁴ About this see: Digital Agenda (communication of the European Commission in the European digital schedule), as part of the Europe2020 strategy.

³⁸⁵ In details see: Magyar Zoltán Public Administration Development Programme, 41–45.

³⁸⁶ *Research report: The results of the questionnaire queried with the participation of civil society organizations and of representatives of law enforcement regarding certain aspects of the operation of the NGOs*. Corvinus, Budapest, January-February 2013, 3.

4. New civil and 'borderline' types of organizations (civil companies, alliances, community foundations, social enterprises, etc.)

4.1. Civil company as a non-profit civil organization without legal personality

Although the issue of the legal personality of the NGOs is treated differently in the legal practice of the European countries, powerful arguments have been presented to introduce the possibility of establishing non-profit organizations into Hungarian law without legal personality. (In Poland, this solution was chosen to resolve the problem of the 15-person limit: the associations having at least 15 founders will have legal personality and associations having three founders will be associations without legal personality or so-called simple associations). An alternative to this solution – in the Hungarian scholarly literature – is the so-called civil company.³⁸⁷

This legal form would not have required registration at the court, but only a minimum level of public registration (e.g. notary public), so that these entities could be easily dealt with in the procedures set out in the legislation. This restriction ultimately was not included in the text of the law that entered into force.

The legislator included the – relatively new – rules regarding civil companies in the act on civil society instead of the Civil Code.³⁸⁸ Civil companies may have only natural entities as members, who coordinate their actions to achieve the common goals that the organizations have been constituted for, focusing on community purposes. This does not exclude the possibility that the civil company may become a member of a so-called association. The civil company has no legal personality and it can be founded without financial contribution as well, and no capital contribution is required either during its operation.

The civil company is set up according to the rules governing the foundation of companies, with the difference that the contract can be terminated with immediate effect for any reason and without justification by any member with the exception of the member who was authorized to administer the causes of the company (meaning that any member can withdraw from the company). The contract shall remain in force in the case of the members' death or withdrawal until the number of the members is not reduced to one person.

A civil company may not carry out any economic and business activity under any circumstances. Therefore, if the company has been established by the parties with patrimonial contribution, the assets cannot be rotated or invested, the patrimony and the subsequent additional contributions may be used until they depleted (to achieve the goals). The company has the right to manage its own finances (i.e. to spend money), because the management is not precluded by the law (if there is a patrimony assigned to the civil company, it must

³⁸⁷ Rixer Ádám: A kormányzat és a civil társadalom kapcsolatának jogi aspektusai Magyarországon. [The legal aspects of the relationship between the Government and civil organisations in Hungary] Dphil. Thesis, KRE ÁJK DI, Budapest, 2006. 58.

³⁸⁸ For details see Art. 5/A par. (1) – 4) of the Civil Act.

also be administered, too), but no economic or business activity may be carried out by the civil company.

The legal form of civil company gives the possibility for community environmentalists, for the members of recreational and hobby clubs, for creative arts communities, for student governments, and for *ad hoc* advocacy organizations to participate in public life (for example: in tenders, in cooperation and in decision-making) without being obliged to respect the constraints inherent in the case of companies with legal personalities.

The legal form of civil company is hardly used in the Hungarian civil society and public sphere: according to a 2013 survey, 25% of the respondent NGOs heard of actually functioning civil companies, while the rest of the respondents, about 3/4 of the sample, did not.³⁸⁹

4.2. Alliance as a special form of association

Now it is possible for civil/non-profit and other organisations to find a *sui generis* legal form for their coordinated functioning: the alliance. According to Paragraph (3) of Article 4, the alliance is a form of association that can be established and operated by only two members. The members of the alliance may be: associations, foundations, other entities with legal personality, organizations and civil companies without legal personality. Natural entities may not become members of an alliance.

4.3. Old organizational form – new tendencies: community foundations

The Hungarian foundations were basically of two types in the last four hundred years: programme-oriented and fundraising or donating foundations in both cases with a relatively close circle of founders, and in the vast majority of cases connected to one or two people. In Hungary, the appearance and the anticipated expansion of the so-called community foundations is a new phenomenon.

The first community foundations were established in the United States in 1914, and in 2010 about 1,680 community foundations were operating in five continents. In Hungary, they only appeared in the most recent period; for example the Ferencváros Community Foundation can be regarded as such (FCF), was registered by the Municipal Court in 2011 on 30 December.

According to the international scholarly literature, among the features of Community Foundations the following ones may be mentioned:³⁹⁰

³⁸⁹ *Research report: The results of the questionnaire queried with the participation of civil society organizations and of representatives of law enforcement regarding certain aspects of the operation of the NGOs.* 2013. January-February, 14.

³⁹⁰ Benedek Gabriella – Kovács Edit – Scsaurszki Tamás: *Közösségi alapítványok Magyarországon – a Ferencvárosban és azon túl.* [Community Foundations in Hungary – in Ferencváros and in other areas] *Civil Szemle* 2012/2. 43.

- A community foundation is a registered not-for-profit organization that serves the community living in a certain geographic area (district, small region, county, town, etc.);
- The most important segments and actors of the community concerned are represented in the leadership of the community foundation.
- It is well informed about the situation, problems, matters of the community and about the possible solutions, too.
- It is an independent organization meaning that it is not influenced by other organizations, institutions or private entities.
- Its activity includes three main domains: fundraising, donations and community building.
- It operates in a transparent manner respecting the laws of the country, and it goes beyond the compulsory legislation in the matter of transparent operation.

Since their appearance in 1994, community foundations gained importance in the civil sector of the countries in which they became popular. The number of these countries is increasing: according to the report of Worldwide Initiatives for Grantmaker Support (WINGS) elaborated in 2005, in seven countries (Czech Republic, Estonia, Poland, Lithuania, Latvia, Russia, Slovakia) there are more than 50 community foundations and in four other countries (Bosnia and Herzegovina, Bulgaria, Croatia, Ukraine) the framework for the establishment of community foundations has been made.³⁹¹

The relative failure of the community foundations in Hungary may be ascribed to several factors. The legal framework necessary for the establishment and development of the community foundations was missing – and it is still missing. In this case we may highlight the lack of encouragement for the collection of capital and financial instruments. Furthermore, the model of community foundations could not have been adopted to the Hungarian social and cultural traditions. The situation is well illustrated by the fact that the fundraising techniques (mostly borrowed from abroad) spread in the 1990s for exploiting local resources could not be connected to the existing local tradition. Last but not least, it must be mentioned that the communities and the organizations dealing with their development wanted to have immediate results, and did not have patience to develop community foundations as – based on the international experience – for the successful operation of such a foundation at least 10 years are necessary.³⁹²

The Hungarian model – as we have mentioned it above – is the FCF. The organization was founded in 2011 as the result of the voluntary work and social capital of nine trustees/curators, and it has become more popular in the district, due to the innovative and mobilizing events (Football Cup of Ferencváros – Daddy the Goalkeeper, Easy Riders' Meeting, Adventure Almanac). The growing interest is reflected in the bank account, too: By the end of 2013, the Foundation's Children's Fund accumulated one million forints, which in the

³⁹¹ Scaurszki Tamás: *Közösségi alapítványok (1. rész)* [Community Foundations (Part 1)] <http://www.prohalo.hu/hu/node/1146>.>accessed 30 June 2013

³⁹² Péterfi Ferenc: *Esélyteremtés a helyi cselekvésre – Közösségi alapítványok Angliában és az Egyesült Államokban.* [An opportunity for local action – Community Foundations in England and in the USA] www.adata.hu/_Kozossegi_Adattar/parolaar.nsf>accessed 23 June 2014

winter of 2014 and spring could be applied for. According to the Board of Trustees, there is no way back from here: FCF becomes a more and more visible and stronger actor in the life of Ferencváros and it encourages the citizens of the district to take actions, to make decisions, donations and for active participation in the local socio-economic processes.

We must highlight the fact that the establishment of Hungarian community foundation is not restricted to Hungary, the first Community Foundation constituted in the Hungarian-speaking areas, was founded in Székelyudvarhely (Romania), in 2007. The Foundation's local embeddedness is indicated by the fact that in 2013, 99 community events were organized and 56 applications/tenders were supported. They dared to have 'big dreams', especially with the introduction of the Community Card. The model works as follows: the free card holder gets some discount from the participating retailer; an equal amount is transferred by the retailer to the Foundation's account, which at its turn – at regular intervals – makes invitation to tender; later the cardholders will choose the winner from the candidates. The Community Card reduces the profit of retailers participating in the programme, but in exchange they will have a loyal customer base, credibility and positive image. The community foundation movement is strong all over Romania: in the country there are at least 12 well known community foundations that allocated 213,000 dollars (more than HUF 42 million) through over 205 competitions and 96 scholarships in 2012.

4.4. The shift towards social economy: borderline forms with growing importance in the field of economy and employment

The definition of the legal frameworks of social economy have not yet been put on the public policy agenda in Hungary, although the term is now being referred to nearly as often as civil society.³⁹³ Even though this 'legalization' has not yet started, there are numerous social enterprises existing in cities and rural areas, as well. While in this sense social entrepreneurship is only an attitude, the enterprises themselves are already present, and exert advantageous impacts, e.g. in agriculture, from the cooperatives of employment objectives, through the associations in the form of regional tourist destination management organizations (TDMs³⁹⁴) to local farmers' markets³⁹⁵ or family day care centres and some Ltds operating similarly to the mutually beneficial civil organizations. So this emerging sector differs from that of the nonprofit organisations which could begin their operations only subsequent to the creation of the legal framework a quarter century ago.³⁹⁶ As a working definition it is enough to say that in the case of social economy we always speak of enterprises that are under participatory control and react to some of the pressing social challenges, so in

³⁹³ András Kelen: Social Enterprises in Today's Rural Hungary. *Civil Szemle* 2012/4. 117.

³⁹⁴ The local and regional tourist destination management organisations do product development (e.g. place information tables on touristic paths), operate touristic information systems, improve public thinking, do marketing and infrastructural development, and unite the stakeholders of tourism, first of all village hosts.

³⁹⁵ The main regulations on direct selling are rule No. 14/2006 FVM-EüM-ICSSZEM and rule No. 52/2010 (IV. 30.) of the Ministry for Agriculture and Rural Development for small producers.

³⁹⁶ Kelen (n 393) 117.

rural areas they most often aim at making the long-term unemployed capable of self-help and find some work for them.³⁹⁷ A further definition and modelling should be set when the legal constitution of the sector is made; until then we can examine the typical solutions in agriculture and try to place their trend into an economic-sociological context by applying constructions of use.³⁹⁸

This issue gains importance in other countries, as well: Vladimír Hyánek, describing the current developments in Czech social economy, also deals with social economy and social enterprises as potential instruments for solving the crisis of the modern welfare state.³⁹⁹

Social entrepreneurship represents one of the most notable innovations in global civil society in recent times.⁴⁰⁰ While many of the activities and approaches associated with this term are not new themselves – for example, social enterprise's use of business models to generate income to support social programmes – the evolution of a discrete organisational field for such actions does represent an important structural change in the institutions of social action. Although the term 'social entrepreneur' was first coined as long ago as the 1970s, it has only been in the past fifteen years or so that the term has started to gain traction within a range of interrelated discourses across civil society, government, and the private sector.⁴⁰¹

However, the institutionalization of social entrepreneurship as a new 'conceptual apparatus' with which to make sense of innovation in civil society remains an ongoing, and sometimes controversial, project not simply because it is seen by some as signifying the marketization of collective action and that of civil society activities previously based around participation, active citizenship, and political change. Indeed, social entrepreneurship has been conceived as a mechanism by which businesses (and the state) can co-opt and compromise the integrity and independence of civil society rather than reinvigorate and diversify models of societal change.⁴⁰²

In the Hungarian scholarly literature beginning with the 2000s, an increasing number of papers have been appearing, which deal with the characteristics of the employment-related non-profit organizations and the analysis of their model programs. One of the first such publications was a summary elaborated by the National Association of Nonprofit Human Service Providers, which summarized the employment experiences of 52 domestic and 17 foreign employment-oriented programs, and the employment experiences of 135 nonprofit organizations dealing with employment related issues.⁴⁰³ Most of these studies until the present days have examined/analyzed the possibilities from the viewpoint of people with disabilities, Roma communities, young people, and long term unemployed.

³⁹⁷ Ibid.

³⁹⁸ Ibid.

³⁹⁹ Vladimír Hyánek: Czech social economy and social enterprises: Current Developments and Challenges. *Civil Szemle* 2012/4. 179.

⁴⁰⁰ Alex Nicholls: Social Enterprise and Social Entrepreneurs. In: Michael Edwards (ed.): *The Oxford Handbook of Civil Society*. Oxford University Press, 2011. 80.

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ Futó Péter – Hanthy Kinga – Lányi Pál – Mihály András – Dr. Soltész Anikó: A szociális gazdaság jelene és jövője Magyarországon. [The present and future of the social economy in Hungary] Nemzeti Felnőttképzési Intézet, Budapest, 2005. 43.

In Hungary there are at least 300 non-profit organizations that are capable and willing to initiate labor market projects.⁴⁰⁴

In the social economy not only the nonprofit organizations founded and funded by the state / local governments appear, but the local, voluntary, self-motivated organizations established at least formally independent of the former category, too.

An indispensable tool for the expansion of employment opportunities is the support and development of economic activities that respond to local demand, and which are designed to serve the benefits of the local community involving the unemployed, as well. For these initiatives the support of the state is needed, but in long the term, they must become self-sustaining. In Hungary, this sector has so far remained untapped, in spite of the fact that in principle the social economy (and within it the social enterprise or the employment cooperative) might become one of the most important fields of employment on the secondary labor market.⁴⁰⁵ The employment cooperative creates the working conditions for the disadvantaged members mainly through labor recruitment activities and temporary provisions of personnel.

According to Art. 14 Paragraph (1) of Act X of 2006, the role of social enterprises is to create working conditions for the disadvantaged, and to promote the improvement of their social situation. The members of social enterprises – beyond individuals – may be: local self-governments or national minority self-governments (hereinafter local self-governments) and charity organizations with public benefit status (conferred to them by law).⁴⁰⁶ It is an important detail that a social enterprise may not have any members that do not want to get involved personally, except from the local self-governments and the charity organizations with public benefit status.

In 2014, in Hungary there were 141 social enterprises.

Besides social enterprises, important actors of the Hungarian social economy are the foundations that promote activities in the field of self-management, self-sustaining, economy and social matters. The best known of them is the No Kid Hungry Foundation [Minden Gyerek Lakjon Jól Alapítvány].

Over the past three years, in 587 settlements more than 35,000 families have been ensured the seed packet sufficient for a year. We emphasize that these are primarily not only donations, but also opportunities for children to learn about the beauty of farming, and eat healthily all the year. The packages contain peas, beets, parsley, lettuce, carrots, spinach, red onion, zucchini, asparagus squash, pumpkins, cucumbers, kohlrabi, late cabbage, green pepper and tomato seeds, which are sufficient for up to 200 square meters of garden.⁴⁰⁷

From 2011, nearly a million day-old-chickens, 200,000 day-old-ducks, 150,000 chickens, 3,000 rabbits and 811 pigs were distributed among families in need. The poultry was distributed among families in which the *per capita* income is less than HUF 28 thousand.

⁴⁰⁴ <http://www.tudasklaszter.hu/node/23>> accessed 10 September 2014

⁴⁰⁵ According to Art. 17 Paragraph (1)–(2) of Act X of 2006 on cooperative societies, an employment society is a social society having at least 500 individuals and one national minority self-government as members.

⁴⁰⁶ Art. 15. Paragraph (1).

⁴⁰⁷ <http://minden.cartmen.hu/az-alapitvanyrol>> accessed 10 September 2014

Besides the animals, the feeding stuff is provided and the foundation also offers professional help and is happy to see that over the years the families are able to expand their holdings.

A specific model of the shift towards social economy is the already well established model of the Western countries, where a non-profit social institution operates farms for a better performance. In Szederkény SZOCEG Nonprofit Kft. (Health and Social Service Non-Profit Limited Liability Company) tries to follow this example.⁴⁰⁸ Joseph Kocsis, the administrator, said that the estate is not a curiosity, they wanted to create a living farm, where the primary goal is value creation. This company maintains basic social services and institutions providing specialized services. It took over the provision of social services from the local self-governments – based on supply contracts – and also making use of normative state contributions, it works within the legislative framework. It provides basic social services and specialized services to those in need in 120 villages from the South Transdanubian region and from Baranya and Tolna Counties.

Despite these examples and new development trends, the legal framework for the development and administration of social economy has not been established yet, the large number of progressive changes has not been concluded in a unified system of institutions, either in the sense of law or political science.

5. The numerical growth of religious associations and the reasons behind it

5.1. (Civil) Society and religion in general

Religion plays an important though complicated role in a healthy civil society eco-system, providing a location for moral debate and the articulation of competing social visions about what is good, right and compassionate. Religious groups mobilize members to protest policies they consider unjust, drawing on the social capital of their members as well as their religious traditions for justification and ideological support.⁴⁰⁹ Religious institutions also perform an important role in socializing children, providing them with moral values as well as inspiring images of what it means to live a productive life. At the same time religious organizations develop programs that serve people in need – especially people who lack healthcare, educational resources, and employment opportunities.⁴¹⁰ In these areas the role of the churches and that of religious communities is inescapable.⁴¹¹ It is not useless to examine

⁴⁰⁸ Bárány Krisztián: Magyarországon egyedülálló a szederkényi szociális gazdaság. [Social farming in Szederkény – a unique example] *MNO* 29 June 2013. <http://mno.hu/belfold/magyarorszagon-egyedulallo-a-szederkényi-szocialis-gazdasag-1169667>

⁴⁰⁹ Donald E. Miller: Civil Society and Religion. In: Michael Edwards (ed.): *The Oxford Handbook of Civil Society*. Oxford University Press, 2011. 257.

⁴¹⁰ Ibid

⁴¹¹ Polgári László: Segítés a végeken – A görögkatolikus egyház szociális tevékenysége. [The Social Activities of the Greek Catholic Church] In: Szegénység és szolidaritás. A 2012. május 3-án megrendezett konferencia

the exact role of the churches in the new task-oriented constellation of the 21st century, still based on the solidarity of the community.

Many researches proved the positive influence of religiosity on morals, which means not only the dissuasive feature of religiosity that keeps one back from committing breach of the law, but also the proactive manner (conduct) of those who have any kind of faith and conviction.⁴¹²

Churches acting in public often have to give reasons for their deeds, and in several cases the Bible serves as an *ultima ratio*. 'Political theology' is a substantial part of contemporary political philosophy. Accordingly political theology is the 'sociology of legal notions' (terms) which is able to prove that all the relevant notions of the theory of the state are former and secularized notions of theology.⁴¹³

The impact of global processes is to erode the tradition-driven belief systems by which groups and individuals structure their lives and this loss of the past, in turn, creates an insecurity about the present and the future.^{414 415} The roles and functions of religious entities in the contemporary society are emphasized elements (alignments) of a contested concept on the re-building of the State. 'After the fall of the evil collectivist regime that insisted on 'the scientific study of atheism', and that dominated world history in the twentieth century so much, what is to be said about the construction of a normal, decent, human society?'⁴¹⁶ *This question is of vital importance for the newly shaped Hungarian civil society and also for the self-identification of the religious movements in Central and Eastern Europe.*

*The role of the State is one of the central issues in most if not all countries. Where should the boundaries of the State be drawn?*⁴¹⁷ *Its role at any time must be to protect its citizens' liberty and ensure their security.*⁴¹⁸ *But how far beyond these imperatives should the state intervene in the activities of individual citizens and religious movements (entities); at what point does intervention for the greater good become interference? What should the State or 'Church' provide in the area of social services? Such questions are scarcely new. But the answers have changed over time.*⁴¹⁹

előadásainak szerkesztett változata. [Poverty and solidarity. The edited version of the presentations delivered at the conference on May 3, 2012.] Keresztény Civil Szervezetek 6. Országos Fóruma, Budapest, 2012. 51–58.

⁴¹² Horváth-Szabó Katalin: Vallás és emberi magatartás. [Religion and human attitude] PPKE BTK, Piliscsaba, 2007. 64.

⁴¹³ Carl Schmitt: Politische Theologie. Vier Kapitel zur Lehre von der Souveränität. Berlin, 1934. 50.

⁴¹⁴ George Schopflin: Civil Society, Ethnicity and the State: a threefold relationship. Centre for the Study of Nationalism, London, 1997. 7.

⁴¹⁵ Multi-Religious Co-operation for the Common Good: Building Healthy Civil Society. Graz, Austria 5–8 May 2005.

⁴¹⁶ Ibid.

⁴¹⁷ Jack Straw MP: *The Changing Role of the British State. Speech to NLGN. February 21, 2007.* <http://www.nlgn.org.uk/public/keynote-speeches/the-changing-role-of-the-british-state/> accessed 7 July 2011

⁴¹⁸ Ibid.

⁴¹⁹ Ibid.

5.2. Religious movements as parts of civil society

What is civil society like? Do churches belong to this sphere? To answer these questions we have to understand the real content of the so called 'civil society'. A new interpretation of modern civil society, inspired by Tocqueville, Durkheim and Weber, is emerging, based on four principles:⁴²⁰

Civil society is typified by more or less formalised institutions: this institutional network forms an autonomous social sphere that is distinct from both the state and from family and domestic life in the strict sense. These institutions have many functions (not just economic, but also religious, cultural, social, etc.) and are crucial to social integration;

Individuals are free to choose whether to belong to civil society institutions: they are never forced to join any of the associations, businesses or groups which make up civil society, either through a political commitment or supposedly 'natural' allegiance to a particular group;

The framework of civil society is the rule of law: the democratic principles of respect for private life, freedom of expression and freedom of association provide the normative framework of civil society. Although civil society is independent of the state, it is certainly not an area outside the law;

Civil society is the place where collective goals are set and citizens are represented: civil society organisations play an important role as 'intermediaries' between the individual and the state. The democratic process could not take place without their mediatory role.

This last point is the only problematic one when discussing whether churches are part of civil society or not, because the most significant role of churches relates to church services and other religious, spiritual practices or even material services provided to their members or to the 'needy', which means that their primary role can't be any extrinsic activity that influences directly the society or any field of social or political life as a whole. Nonetheless, if the 'mediatory role' in question refers to the integrative function of churches which enables individuals to become effective and useful members of the given society, then churches can be seen as social entities effectuating and implementing certain aspects of social cohesion. Moreover, we have to admit that this integrative and cohesive role may go into effect through the provision of social services as well as to the fact that this contribution makes the realization of tasks (duties) of the State (governmental entities) easier. Some authors also share this point of view, describing churches as integral parts of civil society.⁴²¹

As we could see, in international practice, it is debated whether churches can be regarded as part of the nonprofit sector. In Hungary, the CSO and the historical churches drew up an agreement in 1993 according to which churches, denominations and monasteries do not fall under the scope of the statistical observation of the nonprofit category, while church foundations and religious associations do.⁴²²

⁴²⁰ *Opinion of the Economic and Social Committee on the role and contribution of civil society organizations in the building of Europe.* CES 851/99 D/GW, Brussels, 1999. 4.

⁴²¹ Salamon – Anheier (1995) (n 46) 38.

⁴²² Nagy – Sebestény (n 214) 118.

According to Solomon Anheier,⁴²³ ‘churches meet the definition of nonprofit organizations’ (institutionalization, independence from the government, banned profit-distribution, self-government, voluntary character, self-activity), even if their activity is limited to the organization of religious life and the presentation and promoting of religious doctrines. This standpoint is supported by the fact that the international nonprofit research called John Hopkins International Nonprofit Sector Project considered the churches included in the civil/nonprofit sector. In the Hungarian literature we can meet contrary views as well: e.g. Jagasics *ab ovo*⁴²⁴ excludes the churches’ religious activity from the circle of the nonprofit activities.

5.3. The role of religious organisations in Hungarian society

There are some questions that must be answered in advance; one of these issues is the *content of the notion of religion within the legal and social context of Hungary*. ‘It would be difficult, if not impossible, to devise a *definition of religion* which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world.’⁴²⁵ Fortunately, the new Hungarian law, adopted in 2011, gave a definition of it. According to the provisions of the Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities: ‘Religious activity can be defined as the totality of worldview related activities focused on the supernatural having a systematic set of principles and doctrines that concentrates on the reality as a whole, and which – with the specific requirements regarding the human behaviour – influences the whole personality of the adherents’ (Art. 6, Par. 3).

In terms of the debates concerning public morality, the Hungarian churches are relatively active, but they place the emphasis on different issues compared to most Western churches. One example can be cited from 2001 when one of the most important political debates concerned a so-called status law, a law that provided (ethnic) Hungarians living in the neighbouring countries with a special Hungarian ID and a number of privileges. At this point the three historic churches, the Roman Catholic, the Calvinist, and the Lutheran, issued a declaration criticising the attacks on the government. The churches regarded it as their fundamental duty to publicly support a government trying to reintegrate the Hungarians living in the ‘lost territories’.⁴²⁶

The dominant role of the religious organizations in Hungary is not of political character and it doesn’t focus on political engagement and advocacy in the public spheres. Since the regime change the number of organizations working in the domain of services – especially with humanitarian character – has been continuously growing⁴²⁷.

⁴²³ Salamon – Anheier (n 46) 38.

⁴²⁴ Jagasics (n 188) 12.

⁴²⁵ *Adelaide Company of Jehovah’s Witnesses Inc. v. Commonwealth of Australia* (1943) 67 CLR 116 at 123, per Latham CJ.

⁴²⁶ Madeley, John T. S. – Enyedi, Zsolt: *Church and State in Contemporary Europe*. Frank Cass, London, 2003. 165.

⁴²⁷ For further details see: Antalóczy Péter (ed.): *Az állami egyházjog alapjai*. [The Basics Of State Ecclesiastical Law] Patrocinium, Budapest, 2012.

One of the greatest difficulties and contradictions in the current regulation related to the ‘religious sector’ is mostly caused by the fact that the preliminary and follow-up impact studies related to the legislation – and the permanent consultations during these activities – are in most cases partial or even inexistent.⁴²⁸ Thus, in spite of the fact that there are available data regarding the sector, the actual weight and participation of the individual actors, the ‘impetus’ of the sector and the off-handed shift of emphasis of the whole sector may be conceived only post-factum and in an indirect and vague sense. Uncertainties are very well highlighted by the most recent census, in 2011, about 1.6 million fewer people responded to the question related to their denominational affiliation than in 2001 (CSO, 2013). The data thus obtained show that the number of the members of all the denominations declined. There was one exception: the category called ‘Other churches, denominations.’ The number of those who chose this category grew with approx. 70%. However, the radical statistical reduction has no real ‘social background’, most political analysts suspect political reasons, fear of the respondents and less accurate questioning behind this significant decline.

5.4. Legal treatment of religious organisations in Hungary

The religious organisations registered in Hungary – having legal personality – can be grouped in the two basic categories: churches and associations. Due to the minimum requirements for the establishment of a Church and to the very attractive financial opportunities, hundreds of Churches were established based on *Act IV of 1990 on the freedom of conscience and religion and the churches* while the number of the constituted associations was insignificant. Another important Hungarian specificity is that in addition to the organizations registered as churches there have been established associations and foundations (often in collaboration with the founders of the churches) to perform social and cultural tasks – to which the church itself was committed – in a more efficient manner.

In order to analyze the decrease, after 2012, in the number of religious organisations and in the number of those associations which acquired the status of church after the change of the legislation, and in order to see why the number of religious associations increased, it is required to give a schematic description of a specific legal-political process.

While the Hungarian constitutional framework guaranteed equal treatment for all Churches, the social significance and effect of the most popular ones was not ignored. As the Constitutional Court stated: **‘Also, treating the Churches equally does not exclude taking the actual social roles of the individual Churches into account’**. Some scholars⁴²⁹ emphasize that Act XXXII of 1991 on the restoration of property of Churches was undue to the required ideological neutrality and to the constitutional principle of the separation

⁴²⁸ Rixer Ádám: Az előzetes hatásvizsgálatok jelentősége a vallási szféra szabályozásában. [The role of the preliminary impact assessment in the regulations related to the religious sector] In: Dr Erdélyi László (ed.): *II. Egyházügyi, vallásszabadsági tudományos konferencia: 2013. május 30.* [2nd Conference on the freedom of religion and on the matters of the churches – 3 of May 2013] Boldog Élet Alapítvány, Budapest, 2014. 43–56.

⁴²⁹ Ruff Tibor: Egyház – állam – emberi jogok. [Church – State – Human Rights] *Fundamentum* 1997/2. 59.

of the State and Churches because it favoured the Churches, i.e. only Churches received compensation or indemnity under the Hungarian law, contrary to other institutions of civil society (**associations, foundations**) which did not. According to **Decision 4/1993. (II. 12.) of the Constitutional Court**, the importance of separation makes the positive discrimination (affirmative action) reasonable for the benefit of Churches.

In the summer of 2011, Hungarian Parliament adopted the **Act C of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities** which stripped hundreds of religious communities from their status of recognized churches. Only fourteen communities – 12 Christian and two Jewish – were granted the right to keep their status.⁴³⁰

All other religious communities in Hungary were forced to undergo an absurd and highly arbitrary re-registration procedure which, amongst a whole range of barriers, included a final obstacle of being voted on by the Parliament, as to whether each group is a religious organization or not. Such procedures could hardly be much further away from international human rights standards and academically accepted determinations of what constitutes a religion. The fact that only fourteen religious communities were automatically granted the status of religion by the new Act, but Muslims, Hindus, Buddhists and hundreds of Christian denominations have been rejected – clearly shows how arbitrary and discriminatory the Act was.⁴³¹

Although the original arbitrary list of 14 churches was later extended due to the increasing international pressure, it is clear that the Act and the consequent Amendments on the Constitution still don't guarantee the freedom of religion.

Provided that the religions can even overcome the administrative barriers and meet the arbitrary standards that were imposed on them through standards made up by government committees and imposed by civil servants, they will only be finally accepted if they can get a 2/3 majority vote by Members of the Parliament. As a journalist of Hungarian daily newspaper *Népszava* noted in an article about the Act, '*Gods are sitting in the Parliament and will be able to decide what is a religion and what is not*'.⁴³²

Nine Hungarian churches which lost their church status – three reformed Jewish communities and six Christian denominations – filed a claim to the European Human Rights Court in Strasbourg after exhausting all available domestic legal remedies (*Magyar Keresztény Mennonita Egyház and Izsák-Bács and Others v. Hungary – ECHR Application nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12*).

It is interesting to note that the Act was twice rejected by the Hungarian Constitutional Court, but both times the Hungarian Government managed to uphold it with questionable legal maneuvers. First time, in December 2011, after the Hungarian Constitutional Court rejected the Act based on a procedural mistake, the Government withdrew it, and submitted the same act just a few days later with minor changes, none of which contributed to religious freedom (**Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and**

⁴³⁰ <http://cerf-institute.org/2013/09/24/osce-meeting-2013-report-hungarian-law-on-churches-and-its-implications-on-freedom-of-religion-freedom-of-religion/>>accessed 12 August 2014

⁴³¹ Ibid.

⁴³² Ibid.

the Legal Status of Churches, Denominations and Religious Communities).⁴³³ Next time, in February 2013, the Constitutional Court again rejected several provisions of the new act, on the basis that the act failed to stipulate that detailed reasons must be provided when a request for the church status is refused, no deadlines are specified for the Parliament's actions, and no legal remedy is offered.⁴³⁴ The Court also stated that granting church status by parliamentary vote can result in political decisions. The Hungarian Parliament then decided to incorporate parts of the new act in the Constitution itself. This unheard of manoeuvre rendered Constitutional Court unable to examine the act, as the act was technically incorporated into the Constitution itself, so it cannot be said that it is unconstitutional.

This move didn't pass unnoticed and Hungary was again receiving harsh criticism for violating fundamental rights. In June 2013, the Venice Commission of Council of Europe in its report regarding the parts of the Fourth Amendment concerning religious communities, stated among other things the following:⁴³⁵

'The Venice Commission is worried about the absence in the Act of procedural guarantees for a neutral and impartial application of the provisions pertaining to the recognition of churches.'

'According to the latest information at the disposal of the rapporteurs, Parliament adopted a Bill of Recognition on 29 February 2012, with 32 recognized churches. It is entirely unclear to the rapporteurs and to the outside world, how and on which criteria and materials the Parliamentary Committee and Members of Parliament were able to discuss this list of 32 churches, to settle the delicate questions involved in the definition of religious activities and churches supplied in the Act, within a few days, without falling under the influence of popular prejudice.'

One in a series of arbitrary criteria that religious communities must satisfy before they are voted upon by Parliament, is the request that they don't represent any threat to national security. Churches which would be rejected because they would allegedly represent threat to national security, would not be informed why they are considered as a threat or what should they change or improve, and they would have no legal remedy available.

Such 'national security' criteria is in direct contradiction with 2004 OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by OSCE/Office for Democratic Institutions and Human Rights, adopted by the Venice Commission. In the Guidelines it is clearly stated that *'national security' is not permissible limitation under European Convention on Human Rights Article 9.2 or International Covenant on Civil and Political Rights Article 18.3*.⁴³⁶

Subsequently, the 5th Amendment on the Constitution was accepted by the Hungarian Parliament which was supposed to handle the criticism of the act and the 4th Amendment. Hungary's State Secretary of Justice, Robert Répassy, announced that the government would adjust the recent, highly controversial amendments to the country's Constitution adopted by the Parliament in March 2013. Répassy admitted that the modifications contained in the 5th Amendment of the Constitution were initiated as a result of pressure exerted by the

⁴³³ Ibid.

⁴³⁴ Ibid.

⁴³⁵ Ibid.

⁴³⁶ Ibid.

European Union and various human rights organizations, which had criticized the March 2013 revisions as violating certain fundamental rights.

It is obvious that the Government didn't introduce any measures that would improve the situation of religious freedom in Hungary. The 5th Amendment was nothing but a failed attempt to make it seem as if Hungary had listened to its critics while actually not changing anything.

In the recent report about the 5th Amendment, Human Rights Watch stated the following:⁴³⁷

'The Hungarian government's largely cosmetic amendments show it's not serious about fixing the human rights and rule of law problems in the constitution. It's come to the point where the European Council and the European Commission need to make it clear there will be consequences for Hungary, and to move from talk to action.'

'While allowing any religious group to refer to itself as a 'church,' the amendments do not address the discrimination against churches the government has not recognized. A parliamentary committee, instead of an independent body, confers recognition, which is necessary for a church to apply for government subsidies.'

The next important sequel was the idea that Hungary's new 'Church Act' violated the rights of religious communities when it stripped them of their church status, the European Court of Human Rights ruled on April 8, 2014.

Religious communities' loss of full church status breached their rights to freedom of assembly and association and their rights to freedom of thought, conscience and religion, a statement said.⁴³⁸ 'The Court found in particular that the Hungarian Government had not shown that there were not any other, less drastic solutions to problems relating to abuse of State subsidies by certain churches than to de-register the applicant communities' – the court said.⁴³⁹ 'Furthermore, it was inconsistent with the State's duty of neutrality in religious matters that religious groups had to apply to Parliament to obtain reregistration as churches and that they were treated differently from incorporated churches with regard to material benefits without any objective grounds' – it added.⁴⁴⁰

The latest developments was that on 11 July 2014, the judicial committee of the parliament did not support the application submitted by 10 religious associations in order to become churches. *The final word must be declared by the Parliament, but the position of the Committee (and its justification) anticipates the content of the final decision. 'The activity of the religious communities concerned, either carried out by themselves or through their institutions – in particular the preservation of historical and cultural values, the activity related to educational, academic, charitable, social care and to family, child and youth welfare, cultural or sports activities – is remarkable but has insignificant social support. Thus it can be concluded that the organizations listed above carry out their activities with insignificant benefits if one regards their impact on society as a whole.'*

⁴³⁷ Ibid.

⁴³⁸ <http://www.politics.hu/20140408/hungary-church-law-violates-small-church-rights-says-strasbourg-court/> accessed 21 July 2014

⁴³⁹ Ibid.

⁴⁴⁰ Ibid.

In this context for the application of Par. (1) of Art. 33 of the related Act, the Constitutional Court in Paragraph 2 of Decision 27/2014 (VII. 23.) CC established further constitutional requirements.

6. The gated community as a new territorial dimension of the civil sector

The renewal of the civil sector in Hungary has a strong regional/geographical dimension. This – among other things – means the revival of the cross-border cooperation that led to a certain rise of the positive self-image of the cross-border Hungarian civil societies and to the occurrence of a positive change in the relationship with the ‘mother country’ of the cross-border civil communities. Another important aspect is the appearance of certain previously non-existent ‘civilian’ scenes: among which the civilian dimensions of the so-called gated community represent a real novelty.⁴⁴¹

Some authors consider that the civil/nonprofit organisations constituted within these complexes – based on some of their features – can be considered a specific type of organization (or at least a type of organization that can be independently analyzed) within the sphere. In fact, based on certain characteristics (for example volunteering, the presence of self-activity) gated community itself can be described as a quasi-civil society organization (in addition to the civil/nonprofit formations established within them). It is important to stress that although the concept of gated community is present in the public discourse not only as a colloquial expression, the science of law and administration has not yet dealt with the topic. In Hungary there is no independent, separate legislation regarding gated communities – while the rapidly increasing number of such residential areas would justify it.

According to the definition of Gabor Hegedűs, a gated community is an ensemble which includes at least 20 homes and is fenced from its environment (spatial separation), and which offers some kind of community service for the residents (such as green area maintenance) and includes some kind of community facility (such as playgrounds, gardens, etc.)⁴⁴². Those real estate developments, to which the above definition can be fully applied are called by Hegedűs ‘full-featured gated communities’ (*Type 1 gated community*). In his approach the second type is the ‘partially featured gated community’ (*Type 2 gated community*), which is cordoned around, but does not provide extra services to the people living there. This definition⁴⁴³ – and

⁴⁴¹ The Hungarian literature classified under the headword civil / nonprofit organization any form of organization, which was established in part or in full by citizens’ will voluntarily to achieve individual, community, or public goals.

⁴⁴² Hegedűs Gábor: A szegedi lakóparkok társadalomföldrajzi vizsgálata. 3. [Human Geographical Analysis of the Residential Parks in Szeged]. http://www.human.geo.u-szeged.hu/files/c/hegedus/KEK_2009.pdf accessed 2 June 2014

⁴⁴³ Lásd pl.: Cséfalvay Zoltán: Kapuk, falak, sorompók. A lakóparkok világa. [Doors, walls and barriers. The world of gated communities.] Gondolat, Budapest, 2008.; and Csizmady Adrienne: A lakóteleptől a lakóparkig. [From Residential Districts to Gated Communities] Új Mandátum, Budapest. 2008.

distinction – is synchronized with the majority of international and national literature⁴⁴⁴. It is a Hungarian specificity that there is a third type of gated community which refers to those apartment complexes, which do not comply with one or more elements of the above definitions, but they are called gated communities or the local language usage calls them so⁴⁴⁵.

Regarding gated communities, we must highlight that these ‘formations’ and the emerging civil entities growing within them are often perceived in the literature as ‘bad’ non-governmental organizations, one of the arguments being that the residential complexes – though they appear as volunteer and self-interest validating organizations – by the segregation of the elites increase social segregation, another argument being that in the Hungarian practice these areas are created by the privatization of public space.⁴⁴⁶ The latter statement – based on the overview of the history of Hungarian gated communities – is correct, since most of them are built on the land of former state-owned companies, forestry companies, local cooperatives, and in many cases on the land of military objects (!)⁴⁴⁷. Some of the negative connotations associated with gated communities – in addition to the bubble scheme of some specific real estate development projects – is that the majority of the residential complexes had been built up earlier than the economic and human infrastructure was developed for these areas.⁴⁴⁸ In many cases, the initial physical separation (isolation) ‘forced out’ the civil initiatives and the joint actions of the inhabitants to create access to public services (typical issues: road network, public transportation, educational institutions, and public safety-related services). This was a classic example of civil activity. A good example of this is the activity of the well-known Association for the Mediterranean Gated Community in Pesterzsébet⁴⁴⁹.

A part of the overall picture is that the existence of gated communities generated new civil/non-profit organisations not only within the walls of the residential area, on the contrary, civil movements and even civil organizations with legal personality were established against the existence/excessive development and extension of the gated communities, too. Through the gated communities the urban structure became too loose and unhealthy, and the existence of inordinately separated settlement areas in many cases led to serious resistance of the civil society. We have seen in several cases that besides the traditional formal and informal

⁴⁴⁴ Lásd pl.: Blandy, S. (et al.): Gated communities: A Systematic Review of the Research Evidence. University of Bristol – University of Glasgow, 2003.

⁴⁴⁵ Hegedűs (n 442) 3.

⁴⁴⁶ Koltay Elvira: Lakóparkokban működő civil/nonprofit szervezetek a budapesti agglomerációban. [Civil / non-profit organizations working in residential parks in the metropolitan areas of Budapest] *Civil Szemle* 2010/3. 48. [Koltay 2010a]

⁴⁴⁷ Koltay Elvira: Lakóparkokban működő civil/nonprofit szervezetek a budapesti agglomerációban. [Civil / non-profit organizations working in residential parks in the metropolitan areas of Budapest] BA-project – Institute of Sociology PPCU, Piliscsaba, 2010. [Koltay 2010b]

⁴⁴⁸ See: Hegedűs Gábor: Az elzárkózó helyi társadalom – lakóparkok a vidéki magyar nagyvárosokban. [The secluded local community – gated communities in rural Hungarian cities] In: Szabó Valéria et al. (eds.): *IV. Magyar Földrajzi Konferencia*. Debrecen, 2008. 285–286.

⁴⁴⁹ <http://mediterranalakopark.egalnet.hu/object.231C5F92-0312-4E67-A920-FF32117436C2.ivy>> accessed 22 July 2014

organisational movements Facebook communities have been established – and can be thought as civil movements – against the planned extension of gated communities⁴⁵⁰.

According to the dogmatic aspects, the civil/nonprofit organisations established within the gated communities can be classified into two major groups:

a) on the one hand, nonprofit service companies appear in the gated communities to maintain and operate its infrastructure

b) on the other hand, the classical civil society organizations (foundations and associations) appear with community organizing role and working for the beautification of the neighborhood and for the coordination, creation and organization of the financial background for these activities.

The significance of gated communities increases in Hungary by the fact that many of them seek – in the framework offered by law – some kind of special autonomy. In Hungary we have examples for gated communities that became settlements and for gated communities that have partial self-government.⁴⁵¹ An example for the former case is Remeteszőlős – Hungary's smallest settlement – which had separated from Nagykovácsi in 2000, and an example for the latter is Szentjakab Parkfalu in Mogyoród that started to function as an administrative sector with partial self-government.⁴⁵²

There are also known secessionist attempts, which could not get through the pre-launch phase (the breakaway attempt of Fótliget Gated Community of Fót), which have been hindered by a single signature (or rather by the lack of it): President László Sólyom, despite the ministerial proposal, did not declare Magdalena Valley – which attempted to secede of Piliscsaba as a closed residential area in 2006–2007 – an independent village.

Briefly we may state that we have a new type of regional and geographical unit having the characteristics of civil communities and allowing the establishment of civil/nonprofit organizations/formations with a relatively special function. The next few years will show – both in Hungary and in the other countries of Central and Eastern Europe – how these residential complexes will develop in the future, and whether the specific conditions will be created to make the – at least partially independent – reflective law regarding these gated communities, or not.

7. The regional and cross-border aspects of the civil sector

There are many studies that try to create models which connect civil/nonprofit organisations working in certain fields (e.g. social or child protection) with regionalism using different elements. According to Kóbor Krisztina's essay, we can separate at least five elements: 1.

⁴⁵⁰ http://www.origonline.hu/adatbazis/?lap=t-blog-info.php&hely=1&blog=ok&terseg=ok&blog_id=9884749699 accessed 10 July 2014

⁴⁵¹ Koltay (2010a) (n 447) 56.

⁴⁵² Pursuant to Art. 62 Paragraph (1) of ACT CLXXXIX of 2011 on the local governments of Hungary, the representative body of a settlement – according to its statute – may form a partial self-government body the members of which will be the representatives of the settlement and other voters living in the district – to represent the interests of a certain part of the settlement (partial self-government).

common features collected from the pertinent literature; 2. empirical data about the given civil/nonprofit organisations in certain regions; 3. elements of social capital; 4. innovation; 5. regional identity.⁴⁵³

According to Kóbor, the main focus must be on the relationships of these organisations, because if their relationship based on social capital and the co-operations and the bonding are strong, then this has an effect on the other three elements.⁴⁵⁴ If local relationships are an asset, territorial identity becomes stronger. Strong relationships transform into transfer channels, transporting more knowledge, information, support, emotions, experience and so forth. The empirical verification of such a model demonstrates that its five elements have reciprocal effects on one another. They can even be mutually enhancing.

The individual elements of Kóbor's model have a different weight in each of the evaluated and compared regions.⁴⁵⁵ For example, from the economic aspect, the Western Transdanubian Region is more successful than the Northern great Plain Region which has resulted in the fact that on the one hand, there are fewer social and child protection civil/nonprofit organisations and on the other hand, individualism and more frequent co-operation with commercially run organisations are more characteristic in the Western Transdanubian Region.

The above mentioned examples also indicate that in Hungary, the conscious development of regional civil/nonprofit partnerships, and the scientific research regarding these issues are in an early stage. Incidentally, this at least partly reflects the fact that in the Hungarian public administration the regional level has relatively low importance.

Furthermore, among the most narrowly interpreted public administrative contexts of territoriality the issue of institutionalised cross-border cooperation must also be mentioned, which is a form of growing significance of cultural, economic-business and other relationships with Hungarians (and with non-Hungarians) living 'on the other side' of the border. European groupings for territorial cooperation, EGTCs,⁴⁵⁶ which kept their English abbreviation even in Hungarian texts, present the most innovative and most promising form of cooperation of (self-)governments along the border, and in this regard both in the neighbouring countries' policy and in Hungarian policy, Hungary's and the Hungarian settlements' and communities' initiative role is significant.⁴⁵⁷ Act XCIX on the European grouping of territorial cooperation adopted by the Hungarian Parliament on 25 June 2007 allowed the establishment of Ister-Granum Limited Liability European Grouping of Territorial Cooperation (European Grouping of Territorial Cooperation, EGTC) on May 6, 2008. This EGTC is the second such cooperation in the EU, and it involves 47 Hungarian and 39

⁴⁵³ Kóbor Krisztina: Modellalkotási kísérlet: a civil/nonprofit szervezetektől a regionalizmusig. [Modelling experiments: from civil/nonprofit organisations to regionalism] *Tér és Társadalom* [Space and Society] 2012/4. 37.

⁴⁵⁴ Ibid.

⁴⁵⁵ Ibid.

⁴⁵⁶ Regulation 1082/2006/EC about the European Grouping of Territorial Cooperation. The original name (European Grouping of Territorial Cooperation, in short: EGTC), which was overtaken by the implementing law, Act XCIX of 2007, and finally Decree 16/2010. (XII. 15.) of the Minister of Public Administration and Justice simplified it to 'European Territorial Association' (ETT).

⁴⁵⁷ Magyary Zoltán *Public Administration Development Programme*, 35.

Slovakian self-governments, it covers all the issues related to the development of the area being created with the intention of co-operation. Its administration will be carried out by the previously established (in 2003) Ister-Granum Euroregion Agency. The name Euroregion remained, but it is used only in a geographic sense. The institutions working for the development of the region operate within the EGTC. Based on the resolution of the Court of Budapest that became final on 12 November 2008, EGTC became a registered organization and could start functioning legally.⁴⁵⁸ Based on the current trends in Hungary it can be concluded that the participants of the local forms of cooperation choose the new legal form of cooperation as the legal basis of their operation.⁴⁵⁹ Based on the first experience, it is already clearly visible, that from the presently existing legal instruments the EGTC (recently called the ETT) groups are those that, regardless of size and the number of participants, can achieve common and local goals most effectively. This also supports the fact that in the cross-border regional co-operation in addition to the Euro-regional organizations – even within them – an important role is played by the small areas, settlements and associations of border regions, and an even more decisive role is that of the major cities, the so-called center cities of the border regions.⁴⁶⁰

Today, in Hungary 14 ETTs are registered.⁴⁶¹ From the viewpoint of our topic it is essential that the framework and resources for the management of such associations is very advantageous for the civil/non-profit organisations as well, especially where a substantial part of the activities require active civil involvement, too.

8. The development of Hungarian civil society outside of Hungary

The Hungarian minority's civil society outside of Hungary, especially in Romania and Slovakia (the cross-border territories with the largest number of Hungarian ethnics), is an important research topic.⁴⁶² The picture is mixed: on the one hand, both the local Hungarian community and the efforts of the mother country are very well defined and point in the direction of the cooperation and of the conscious evolution, on the other hand, however, the extensive researches – based on which a clear picture could be obtained regarding the civil segments, – are not numerous and are mostly irregular and insignificant. This could be one of the most important provocation for the scientists dealing with the Hungarian civil sector.

⁴⁵⁸ Baranyi Béla: A határmentiség új dimenziói – együttműködés határok nélkül. [The new dimensions of the border regions – cooperation without borders] http://szemle.unideb.hu/wordpress/wp-content/uploads/bsk-pdf-manager/230_2014-07-11.PDF> accessed 22 May 2014

⁴⁵⁹ Dr. Erika Szabó: Hungarian proposals for the revision of EGTC Regulation and EGTC good practices. Presentation of the Conference on Multilevel Governance and EGTC, 21–23rd March, 2011 – Gödöllő (Hungary).

⁴⁶⁰ Baranyi (n 458)

⁴⁶¹ <http://egtc.kormany.hu/magyarorszagonyilvantartasba-vett-ett-k>> accessed 13 May 2014

⁴⁶² Tünde Székely: Hungarian Minority Civil Society in Romania and Slovakia. *Civil Szemle* 2012/3. 177.

However, it is positive that the number of scientific publications and surveys, dealing with the comparison of several countries along the characteristics of the civil/nonprofit sectors increased, trying to compare and to list the community practice of the subject countries (focusing on the best practice principle)⁴⁶³.

A presentation of the Hungarian civil organisations in **Romania** is primarily based on the researches carried out by the Institute for Ethnic and National Minority Studies (based in Cluj-Napoca) in 2009–2010.⁴⁶⁴ According to special estimations, there are 1200 Hungarian civil organizations in Romania; some other estimations mention 2000 of them.⁴⁶⁵ By their legal status, these organisations are foundations, associations and federal organisations. 67% of them function under the form of association, 23% function as foundations, and the remaining 10% are registered as federal organizations. The reason for this kind of percentage distribution is that associations require the most convenient establishing conditions both from a legal and a financial point of view; this accounts for its popularity. Since 2002, registering a foundation requires an extremely high initial capital (approx. 13 million HUF), which has led to a drastic plummet in the number of foundation registrations.⁴⁶⁶

Federal organization is a form of organizational structure in which several civil organizations unite to establish a new legal entity. Every founder organization becomes a member of the new entity; so federal organisations are usually umbrella organisations. The reason for such a low rate of this sort of organisations might be that civil organisations rarely establish umbrella organisations in Romania.⁴⁶⁷ One of the few prominent umbrella organizations is the Association of the Hungarian Civil Organizations of Transylvania which constituted a counselling and information center in Cluj-Napoca at the Bocskai House.

A certain hierarchy has been established among the Transylvanian Hungarian civil organizations as well. The ‘big’ civil organizations carry out their activities constantly in the limelight: these organizations provide security and impetus for the smaller civil movements as well. Among the most important organizations we may find The LAM Foundation, the Amőba Foundation in Sfântu Gheorghe, the Civitas Foundation in Cluj-Napoca.

There are NGOs that operate safely within the chosen framework. They are not of national importance, but locally their existence and activity is essential. A good example is: the Hungarian Cultural Society in Săcele, the Teleki Hungarian House in Baia Mare or the Diaspora Foundation in Timișoara. There are ‘thematic’ civil organizations, too, which are not necessarily related to the Hungarians, but are extremely important and focus on social problems, such as the Green Transylvania Association or the Maltese Charity Service in Timișoara.

⁴⁶³ E.g. Utasi Ágnes: *Közösségi és közéleti aktivitás. Vizsgálat három ország hét magyar kistelepülésén.* [Community and public activity. A survey ran in seven small Hungarian settlements in three different countries.] Belvedere Kiadó, Budapest, 2012.

⁴⁶⁴ Kiss Dénes: *Romániai magyar nonprofit szervezetek – 2009–2010.* [Hungarian nonprofit organizations in Romania 2009–2010] In: Júlia Hosszú – Horváth István (eds.): *Műhelytanulmányok a romániai kisebbségekről, 37.* [Studies regarding the Hungarian Minority living in Romania, 37] Romanian Institute for Research on National Minorities, Kolozsvár, 2010. 3–30.

⁴⁶⁵ Székely (n 462) 178.

⁴⁶⁶ Ibid. 179.

⁴⁶⁷ Ibid.

However, we cannot avoid the fact that many organizations do not prove to be viable within the analyzed segment, and thus the literature is constantly forced to deal with the problem of 'sleeping organizations'.⁴⁶⁸

As for the field of activity of the civil organisations, we can declare that more than 51% of them are dedicated to cultural purposes, and 11.1% of Hungarian civil organisations are specialized on education and research.

As for the sources of income of the civil organisations, application funds account for 60% of all the incomes, which shows a high dependency on application funds. Economic sectors and personal donations make up only 21% of the income of civil organisations. We need to mention, there is also a possibility to offer 2% of the personal income tax to civil organisations; according to the collected data, this amounts to 17% of the total income.

Based upon Tóth Károly's estimation,⁴⁶⁹ there were about 2000 Hungarian organisations in **Slovakia** in 2003/2004, many of them being members of certain umbrella organisations (e.g. CSEMADOK⁴⁷⁰, and Szlovákiai Magyarok Kerekasztala). Considering this factor, there are 3000–4000 registered organisations. Presently there are 1178 institutions and organisations in the database of the Forum Information Centre website. According to research findings obtained in 1999–2001, 88.6% of Hungarian organisations in Slovakia avowed themselves to be cultural organisations and 12.6% declared to be engaged in education. Extremely few organisations carried out other types of activities (social, environmental, youth, sports, etc.). The next research in line took place in 2003. According to these results, 68.5% of Hungarian civil organisations in Slovakia carry out cultural activities (!). Compared to the first research there is a visible decrease in the number of organisations engaged in cultural and (general) educational activities, on the one hand, but we can also witness the appearance of organisations, which have (primarily) media, youth, sports related activities.

By their legal status 63% of the organisations are civic associations, 12.7% are foundations, 9.3% are public benefit organisations, 5.8% are charity foundations, and the remaining 9.2% have other legal status. With regard to the foundations it should be noted that the vast majority of them are organizations which have been set up besides a municipality with Hungarian majority government, to help its activity⁴⁷¹.

Of course – as we mentioned – the existence of cross-border Hungarian civil society, its level of organization and its quality is a priority for both the *a*) civil and the *b*) public entities of the mother country.

Civil organizations included in point a) were established in Hungary especially to help the cross-border Hungarians preserving their identity without leaving their native country. The best-known representatives of this type of organisations are the Foundation for the Hungarians Living Beyond the Borders (Pécs) and the Carpathian Foundation Hungary

⁴⁶⁸ Bodó Barna: Alvó szervezetek. [Sleeping Organizations] *Civilforum. Erdélyi civil társadalmi lap* 2014/1. 3 p.

⁴⁶⁹ Tóth Károly: A magyar intézményrendszer fejlődése. In: Fazekas József – Hunók Péter (eds.): *Magyarok Szlovákiában I. (1989–2004)*. Forum Minority Research Institute, Somorja – Dunaszerdahely, 2004. 247–270.

⁴⁷⁰ Formerly named: Czechoslovak Hungarian Workers' Cultural Association, presently: Hungarian Social and Cultural Association of Slovakia.

⁴⁷¹ <http://vilag.transindex.ro/?cikk=21335> accessed 30 July 2014

(Eger), which is an independent non-governmental organization serving the Carpathian Euroregion. The mission of the Carpathian Foundation-Hungary is to improve the quality of life of people living in the Carpathian Euroregion, and to preserve the social, ethnic, cultural and environmental values and to provide sustainable development of the region. Its significance is increased by the fact that it deals with the training of the representatives/administrators of the cross-border Hungarian civil organizations: for example it launched a complex professional training for project assistants the target group being the Hungarian civil organizations operating in the Ukraine.

A vast activity is carried out by the Rákóczi Association and by the Hungarian Cultural College Association, too⁴⁷².

The activities of the state actors to support cross-border civilian communities can also be traced – besides the direct financing (the material support) – based on the extent in which the institutional forms of the personal relationship with the mother country are present. It is significant that in the latest Hungarian legal development – contrary to the previous regulation – the legal basis was established for Hungarian citizens' (typically those living in the neighbouring countries) participation in parliamentary elections without Hungarian residence.⁴⁷³

Among the significant management circumstances – within and across the borders – those must also be mentioned which allow for persons and organisations across the border to receive some kind of financial assistance. Therefore according to Act CLXXXII of 2010 on the Bethlen Gábor Fund a separate state financial fund was established for facilitating the prosperity of Hungarians living abroad in their homeland and the preservation and development of their diverse relationships with Hungary, and for strengthening their Hungarian national beliefs. A change of *paradigmatic importance* is that from the resources of the National Cooperation Fund (NEA) operating as the main financial resource of Hungarian civil associations not only domestic organisations, but – if they meet basic requirements⁴⁷⁴ – also (Hungarian) civil associations operating abroad may benefit. Moreover, it is also important that according to the provisions of Act LXII of 2011 on Hungarians living in the neighbouring countries – who possess a *Hungarian identification card* or *Hungarian relative identification card* – may receive educational, cultural, community cultural, health care, travel and other allowances, benefits and services.

An outstanding aspect of the life of the cross-border Hungarian communities is their will to preserve their religious identity, which very often separates them from their surroundings as well as their language and cultural habits (see e. g. the Calvinist Hungarians living in Transylvania). Another instrument, the significance of which goes beyond the mere amount of support, is the one aiming at supporting Hungarian religious legal persons and votaries in neighbouring countries, through which the government and the religious legal person operating in a neighbouring country may conclude an agreement about the sup-

⁴⁷² For example, it was this latter association that organized the 3rd Reunion of the Civil Organizations of the Hungarian Minorities Living in the Carpathian Basin at Budakalász between 26–28 June 2003.

⁴⁷³ According to Article 12 Paragraph (3) of Act CCIII of 2011 on the election of the members of Parliament voters without residence in Hungary may vote only on party lists (i.e. not on individual candidates).

⁴⁷⁴ See for example Article 59 paragraph (4) of Act CLXXV of 2011 on the right of association, non-profit status, operation and support of civil organisations.

*plementary funding of church servants serving in Hungarian in settlements with less than 5,000 Hungarian inhabitants.*⁴⁷⁵

Besides the exchange of experiences and the moral and material (financial) support, it would be important that the data regarding the cross-border civil society organizations should be accessible in an organized manner. This is carried out partially by the site erikanet.hu (unified database of the cultural organizations operating in the region), that catalogues in detail the data of the most important 175 civil organizations operating beyond the borders of Hungary.⁴⁷⁶ Of course, more and more such data bases are available in written and especially in electronic format.⁴⁷⁷

Regarding the analysed sphere exceptional opportunities are given by the electronic surfaces, and it can be observed that these electronic forums appear not only as a new set of methods for the self-organization of the Hungarian communities, but as the promoters of these communities' image having a great impact on the self-image of the community too. Balázs D. Attila in his work entitled *Trend changes in the content of the cross-border Hungarian online media* (Médiakutató 2006/4. 1.) makes reference to the history and the development of the online media in Hungarian language operated by the Hungarian communities living in the Carpathian Basin and presents some aspects of the portals operated by Hungarians living overseas and in other Western European countries. In Transylvania an independent civilian journal was established, too: since 2009 the Civilforum has been published. It is a journal dealing with the Hungarian civil society existing in Transylvania. It is published at Cluj-Napoca. One of its main topics is the analysis of the image of civil communities as it appears in the printed and in the electronic media.⁴⁷⁸

9. The rearrangement of the spheres affected by the civilians and by the state

The appearance of the civilians in the areas previously 'dominated' by the state and the entering of the state in the spheres previously supervised characteristically by the civilians is a clearly observable trend.

⁴⁷⁵ The legal basis of agreements is – among others – Government Decision 2172/2004. (VII. 12.) on the conclusion of agreements between the Office of the Prime Minister and twelve church legal persons operating outside of the borders of Hungary about the supplementary funding of church servants serving in Hungarian in the sporadic settlements with less than 5,000 Hungarian inhabitants.

⁴⁷⁶ http://www.erikanet.hu/oldal.php?tol=40&db=20&szulo_objektum_id=0&kereses=1&func=&objektum_tipus_id=75&menupont_id=6557 accessed 23 May 2014

⁴⁷⁷ One of the first such data bases was the work entitled The Database of the Hungarian Civil Organizations in Slovakia elaborated by Nagy Myrtil (Lilium Aurum Könyvkiadó Információs Központ, Dunaszerdahely, 2002. 443 p.).

⁴⁷⁸ See for instance: Bodó Barna: Civilek – a sajtó tükrében. [Civilians – as conceived by the media] *Civilforum. Erdélyi civil társadalmi lap* 2014/1. 6 p.

Of course, the civil and the public (government) actors take part in the performance of public duties not only 'at the expense' of each other. Even if with some delay, in certain – typically human – fields of public services new forms of cooperation appeared in Hungary.⁴⁷⁹ Those new forms of cooperation are arising in Hungary, which are based on the recognition that the parallel but barely interlocking presence of the state or market-based logics and of the civil/nonprofit logics and institutional mechanisms may significantly weaken the quality of the given public services due to the organizational, legal and conflict resolution cleavages and to the rigid boundaries. In some areas, there seem to appear partnerships, which allow the public access to policy decisions for all of the concerned, and there are developed important arenas where it is possible to discuss the necessary measures and the quality requirements.

To the above mentioned facts, however, it should be added that the appearance or the more pronounced intervention of the civilians in certain areas has not always been / is not in sync with the state's goals or the self-image of the current government.

9.1. The intervention of the state in public services previously performed by civilians

The expansion of state tasks (public tasks) – in line with international trends – has been continuous in Hungary in the past few decades, even though in certain periods due to increasing outsourcing, the addressees of laws (responsible for the provision of certain tasks) and the actual performers were significantly different. The expansion, naturally, does not only mean the emergence of new tasks, but also the 'secularization' of certain tasks which existed before but were trusted to nonprofit organisations due to e.g. their marginal significance. For example, in the 2000s the protection of victims became a state task,⁴⁸⁰ even though in the given field the **Fehér Gyűrű Kiemelkedően Közhasznú Egyesület** [Fehér Gyűrű (White Ring) Public Benefit Association] had successfully been working before.

It is also important that the development of public administration is not an end in itself. The citizens' (the 'clients') satisfaction, if you like, their happiness must be the primary goal of all administrative activities. When the performance of the public administration's activities is faster, more accessible and more transparent the level of the citizens' satisfaction is increasing too. Of course, there are not only indirect, but also direct ways that directly meet the basic needs of the people, which are mainly community needs, and that primarily try to develop and maintain human relationships.

If we formulate it otherwise: the basic needs of a man is not to be surrounded by a quick and efficient public administration, but to have a full human life in which he/she may be socially active and creative, and in which he/she is strengthened by the inter-human relationships based on reciprocity.

⁴⁷⁹ A. Bryce Høflund: Building a Network Administrative Organization's Social Base: Lessons from the National Quality Forum. *Administration and Society* (2012) Vol. 44, No. 8, 908–910.

⁴⁸⁰ See the provisions of Act CXXXV of 2005 on the Assistance for the Victims of Crimes and State Compensation.

How is this possible in a not paternalistic, but democratic, developing and efficient administrative system? It is likely that a new type of organizing public administration will emerge, which will also lead to rearrangements and changes in the relative importance of the other administrative functions (legislation, law enforcement, services, etc.) – and this ultimately can lead to the reevaluations of these functions. One of the main specificities of the public administration dealing with program organizing and public relations is that its activities are not performed in the space designed, maintained and/or funded by the department or the state (government), but the events take place in the public sphere, in which the real novelty is that these scenes are not – necessarily and primarily – virtual scenes, but they are very real and ‘palpable’.

One of the first but most general signs of this process (‘direction’) is the effort, under which the government organizes markets and cultural or social programs with community character. The phenomenon described in this paper is different in the sense that it no longer requires the presence, the involvement, the pre- or post-funding of the representatives of the authority, and the state/local government is only present in the events as the driving force and catalyzer.

One of the concrete examples is the European Neighbours’ Day launched for the first time by NEFMI and later by the EMMI through Hungarofest Nonprofit Kft. The event aims to raise awareness and by offering concrete support to the organizers (mostly by providing space for information) it tries to help the neighbours fight the remoteness and break through the wall of impersonality and open up to each other. The specific events are organized by civilians, voluntarily, in their private flats and in community – most often public – places and locations.

In April 2011, for example, in 50 buildings in Budapest (in health, social and educational institutions next to the homes of people) residents and workers hosted the visitors. During the two-day event nearly 16 thousands of curious city dwellers visited the houses (apartments, studios, lofts). It was possible to visit the centuries-old buildings, but the visitors were expected also by numerous programs organized by the residents helped by volunteers, and sometimes even minor parts of the buildings were renewed with common work on the occasion of the centenary – the program Budapest100 was surrounded by unexpected enthusiasm. All this and the volunteer willingness of the centuries-old buildings’ owner motivated the civilians to continue with this project. In 2012, 60 buildings (35 houses and 25 institutions) opened up their gates during the weekend that was the closest to the year’s 100th day. The number of visitors was nearly 17 thousand. In 2013, 50 centuries-old buildings (15 institutions and 25 houses) joined the program, and nostalgia trams evoked the atmosphere of the city 100 years ago. The number of visitors exceeded 18 thousand.

The whole program’s essential element is that the actual organization of the event in 2006 was carried out by the Contemporary Architecture Centre Foundation (CLC), which, in 2014 on the 26–27 April, organized the open weekend of the centuries-old houses in Budapest for the fourth time, the program being called ‘Budapest100’. It implied nearly 60 locations and offered more than 150 programs and counted 20,000 visitors. It is essential that the public / authorities appeared as supporters and helped the flow of information, and took part in the coordinating activity.

It is reasonable to assume that the organizing character of the public administration, which assumes civil participation as well and which has the role of a catalyst will be strengthened in the near future in Hungary.

9.2. Civil actors searching place in the field of public functions reserved for the state. The example of public policing

9.2.1. Introduction

Between 1991 and 2006 – i. e. between the taxi drivers blockade and the attack against the Hungarian State Television – there were no serious political demonstrations or clashes on the streets of Budapest, moreover political culture, the forms and mood of political debates didn't change at all within those fifteen years. In Hungary, in the nineties, the partnership between the protesters and the police seemed inextricable, but after the turn of the millennium and together with the disappearance of the fear of the previous repressive regime and in parallel with the political polarization, after 2002 and especially after 2006⁴⁸¹ the mass street violence appears and is linkable in many cases expressly to registered NGOs.

Thus, civil society is not always 'civil' in Hungary (either). Its civil character, its lack of violence and its self-organizing force in many cases are the results of the external factors like the authoritarian past, the paucity resulting from the economic crisis, the impact of political crises on the formation of different political sides, but in some cases these may be the results of other – even situational – factors (such as Polish Catholicism, national identity, social engagement in the Solidarity movement), too.⁴⁸²

The events of September and October 2006 in the streets of Budapest⁴⁸³ clarified the old truth – which has been justified also in other contexts – that it is impossible to leave our past behind 'with one big jump'. 'The frequency of protests, their violent or peaceful occurrence, and the application of sanctions by the authorities, especially the police against the protesters, and police violence may be signs of the stability of democracy, the institutionalization of the right to assembly and the freedom to express opinions.' (Máté Szabó, ombudsman)

It may be stated that the attempts to ensure the democratization of the police by means of law, politics and publicity have failed in Hungary after the change of regime (as confirmed by the events of 2006). This statement may be upheld even if it is obvious that the most neuralgic point of law enforcement is the obligation to follow – even unlawful – orders, which results from military principles.⁴⁸⁴ It is not a coincidence that the actions of the European Union in the field of law enforcement mainly target the enforcement of fundamental rights,⁴⁸⁵ the strengthening of their guarantees, and the abolition of possible legal and organisational obstacles.

⁴⁸¹ Szabó Máté (2012) (n 363) 64.

⁴⁸² Ibid.

⁴⁸³ Nationalist demonstrators stormed the headquarters of Hungarian State Television in September 2006, as their predecessors did in 1956 with the Hungarian Radio, and believed that they were the followers of the 1956 Revolution against communism in the 21st century, destroying the building and the equipment of the Television, which did not accept their spontaneous memorandum in the national TV program (Máté Szabó: *Human Rights and Civil Society in Hungary (1988–2008)*. OBH, Budapest, 2009. 265.)

⁴⁸⁴ Christján László: *A rendészet alapvonalai, önkormányzati rendőrség*. [Basics of law enforcement, municipal police] UNIVERSITAS – Győr Nonprofit Kft., Győr, 2011. 135.

⁴⁸⁵ Nowadays several authors include – in addition to territory, population and central power – as a fourth element the criteria of enforcement of fundamental human rights norms into the elements of the notion of the state.

As existentialist philosophy assumes that the real personality of the individual is – often – shown only in border situations at the edges of life; similarly, the real democratic commitment of certain law enforcement structures and the participating persons may be measured only in unplanned, sudden – sometimes cataclysmic – events requesting immediate reaction. Every similar situation is a great opportunity for organisational learning and for gaining individual experiences in terms of basic rational and moral truth. From another perspective, continuing the thought of Elemér Hankiss according to which, the structural continuity of certain civil values may be observed in the deep also in the decades of state socialism,⁴⁸⁶ it may be stated that certain signs of the continuation of long respected values are still observable – as a heritage of state socialism. As stated by Péter Kántás (in a totally different theoretical approach): ‘Undefined notions of law in the field of law enforcement – such as public order – have survived the police state and due to their substantial uncertainty they may become dangerous weapon in the hands of law enforcers even within the framework of *rule of law* (type) public administrations.’⁴⁸⁷

Parallelly, the culture of protest, as a functional segment of political culture is still rudimentary in Hungary, and there are several problems which should be solved by processes of political learning.⁴⁸⁸

To sum up, the socialization experiences of the relevant actors were gained in the old authoritarian-bureaucratic system.⁴⁸⁹

9.2.2. Civil initiatives in the field of policing

Establishing and maintaining public safety and public order is the exclusive right and obligation of the state in each European country. Voluntary, civil participation of citizens in this task is a goal which is acknowledged and supported by the state, while it also defines the frameworks and conditions of this activity. In Hungary, within civil law enforcement the civil guard (militia, in Hungarian: *polgárőrség*) is very significant. These are unique organisations among which the first ones started operating just after the change of regime in 1990 as local movements directly supported by the Government, at that time mainly without legally recognised organisational form and legal personality. By 1992, county level and national level organisations were established and the majority of local movements were also organised into civil guard associations. Their cooperating partners are police bodies and they receive financial support from the state.⁴⁹⁰ In addition to their crime prevention activities, these entities also perform law enforcement and community organiser tasks in

⁴⁸⁶ Hankiss Elemér: *Diagnózisok 2.* [Diagnoses 2.] Magvető Kiadó, Budapest, 1986.

⁴⁸⁷ Kántás Péter: *A közrend elleni jogsértések természetéről.* [The nature of the offenses against public order] D.phil. Thesis, ELTE, Budapest, 2010. 2.

⁴⁸⁸ Szabó M. (n 483) 262.

⁴⁸⁹ Ibid.

⁴⁹⁰ The National Civil Guard Association, the national organisation of civil guard associations received 700 million HUF in state support from the budget of 2012 according to Act CLXXXVIII of 2011 on the 2012 state budget of Hungary.

Hungary. In 1996 – for the first time in Europe – an act was approved about the civil guard, acknowledging their social role and significance.⁴⁹¹

However, by using the name civil guard, some organisations⁴⁹² were established before the parliamentary elections of 2010 which indicated the restoration of public order as their objective, although their activities led to the emergence of social, sometimes specifically ethnic conflicts. As a reaction to this new phenomenon the latest legal regulations not only cover the activities of the civil guard, but provide detailed regulations also about their organisations and their operation, thus preventing illegal activities carried out under the cover of civil guard tasks, as well as the abuse of the right to assembly.⁴⁹³ The § 3 (5) of the Civil Code explicitly states that ‘based on the right of association, no armed organizations may be established, and no tasks being under the legal provisions in the exclusive competence of the public authorities can be performed.’

The media was the most interested in the appearance of the vigilante associations constituted in the recent years, which have been established along the admittedly extreme right-wing ideas with policing objectives. Besides the best known such association, that is the Hungarian Guard, the Better Future Civil Guard Association was established in Gyöngyöspata, and the Hungarian National Front providing ‘training’ for the performance of policing duties. According to the decision of the Supreme Court in 2000 that confirmed the dissolution of the Hungarian Guard: ‘[the] Guard with its frightening manifestations and uniformed street presence and with its intimidating actions went beyond the border of what can be protected constitutionally based on the principle of the freedom of opinion.’

Analysing the motives we must call the attention to the fact that unlike the primarily liberal democratic political youth movements in the first years after the Hungarian transformation, the current youth population is showing higher tendencies towards support of traditionalism and of radical-right organizations.⁴⁹⁴ Rejuvenated by the radical-right political party Movement for a Better Hungary (Jobbik) and its related radical civic programs and organizations, the radical-right is creating a strong social network for young Hungarians, building cultural, historical and community structures and having an effect on everything from music and fashion to value formation.⁴⁹⁵

⁴⁹¹ Madai Sándor: A rendészeti feladatellátás, mint közszolgáltatás. [Performance of law enforcement tasks, as public service] In Horváth M. Tamás (ed): *Kilengések. Közszolgáltatási változások.* [Swings. Public service changes.] Dialóg Campus, Pécs–Budapest, 2012. 225.

⁴⁹² See for example the case of the Hungarian Guard (Magyar Gárda).

⁴⁹³ Madai (n 491) 225.

⁴⁹⁴ Erin Saltman: Radical Right Culture and the Youth: The Development of Contemporary Hungarian Political Culture. *SLOVO* (2010) Vol. 23, No. 2, 114–31.

⁴⁹⁵ *Ibid.*

9.2.3. Conclusions and new directions

In Hungary one of the main directions of scientific initiatives,⁴⁹⁶ legal⁴⁹⁷ and practical changes observable in the examined field aims at the continuous renewal of the tasks of local governments related to public safety and the possible ways of performing their tasks. Despite the conscious attempts for legislation,⁴⁹⁸ the legal environment – regarding the possible forms of organisation, the possible enforcement tools as well as regarding the available material resources – is incomplete and fragmented, and results in controversial practices, even though the legal policy objective is to significantly increase the opportunity for local communities to take part in defining local public safety priorities.⁴⁹⁹

Reviewing those new experiments, which attempt to increase the civil activity and the participation of the citizens in the domain of policing, it is necessary to mention those that are trying to implement community policing paradigm.

Between 2012 and 2015, with the help of the Swiss Contribution of 476 million HUF (a total budget of over 560 million HUF) the experimental introduction of a community policing model can be realized in Miskolc, Nyíregyháza, Szeged and Zalaegerszeg. The project goal is for the Police to size up the criminal problems together with the local communities, and draw up (work out) solutions jointly. After the experimental stage the system of Community Policing can be introduced in 20 other cities through ‘*Multilevel Community Policing Network (MCPN) for the cooperation based crime prevention*’ project. As part of the program on the 1st of July 2014 in Zalaegerszeg four community police officers began their activity in the police force. Their essential duties were the maintenance of contact with local citizens, the transfer of information in both directions and the stimulation of organized self-help when facing local problems.

The relation with the actors of the community is only seemingly an unambiguous dimension, in fact, one must move off from the dominant paradigms in this area, too. Community policing requires joint decision-making with the community (and its agencies), and the establishment of order and security in order to promote and to maintain social structures.

⁴⁹⁶ See the cited work of László Christián (n 484)

⁴⁹⁷ Article 17 of Mötv.

(1) The municipal and metropolitan local government may ensure local public safety, the protection of its property or other valuables by establishing an organisation to which law has given the right to apply enforcement measures.

(2) The organisation defined in paragraph (1) shall perform its basic duties based on the written cooperation agreement concluded with the county (metropolitan) police authority competent in the territory of the settlement and the capital, under the professional supervision of the police.

(3) Tasks which may be performed by the organisation defined in paragraph (1), as well as available enforcement measures, rules of the cooperation agreement and the operation of the organisation, and staff requirements of the community organiser tasks, task performers shall be defined by law.

(4) These provisions shall be applied accordingly if the government does not establish a separate organisation for the performance of tasks defined in paragraph (1) herein.

⁴⁹⁸ See for example Act CXX of 2012 on the activities of persons performing certain law enforcement tasks and the modification of certain acts in order to ensure efficient measures against truancy.

⁴⁹⁹ For details see: Kiss Bernadett: Új lehetőségek előtt a településrendészet? [New possibilities for municipal law enforcement?] *Belügyi Szemle* (2013) 61(4) 49–60.

It is necessary to mitigate the dependence on the police, so that the police forces would only support the otherwise self-sufficient and efficient community able to solve their own problems. This also means that it would be essential for the police to have more focused problem solving procedures and to be prepared to adapt their structures according to the instructions of the local community.⁵⁰⁰

10. Roma Civil Society in Hungary

10.1. Introduction

Why do we tackle the Roma-question within the context of Hungarian civil society, why is it such an important issue? The answer is tragically simple: besides their low socio-economic status, the Roma (called *cigány* or *roma* in Hungarian) in Hungary undoubtedly suffer from lack of resources and institutional means to articulate their needs and to obtain recognition for their claims. We have to emphasize that the ability of the Roma to participate in social and community life in an organized manner is a critical issue.⁵⁰¹ The situation of the Roma communities, the largest minority living in Hungary, differs from that of the other minorities in our country in many respects. In the case of the Roma, social, employment, vocational training and educational problems appear in a greater extent.⁵⁰² The major social and structural upheavals in Hungarian society since the collapse of communism, coupled with several types of discrimination, have had a disproportionately large and negative impact on the Roma, whose low social status, lack of access to education, and isolation make them relatively unable to defend themselves and their interests.⁵⁰³ Unfortunately, reforms initiated by Hungarian politicians have often been undertaken without considering their devastating impact on the country's Roma population. The Roma suffer nearly total marginalization within Hungarian society: they are almost entirely absent from the visible political, academic, commercial, and social life of the country.⁵⁰⁴ We must admit in advance that the governments in power, the majority of the society, the Roma minority and the civil organisations all share responsibility in this matter.

⁵⁰⁰ Introducing community policing: The experiences of 12 police departments. Haza és Haladás Közpolitikai Alapítvány, [Homeland and Progress Public Policy Foundation] 2013. http://www.hazaeshaladas.hu/ftp/kozosségi_rendeszet_.pdf accessed 1 February 2014

⁵⁰¹ Nagy Ádám – Székely Levente – Vajda Róza: Empowering Roma Youth – The Hungarian Civil Youth Sector, Highlighting Roma Organizations. Open Society Institute Youth Initiative, New York, 2010. 1–2.

⁵⁰² Dr. Toso Doncsev, President of the Office for National and Ethnic Minorities (ed.): Measures taken by the state to promote the social integration of Roma living in Hungary. Published by: Dr. Rudolf Joó, Deputy state secretary at the Ministry of Foreign Affairs. Budapest, 2000. 1.

⁵⁰³ <http://www.unhcr.org/refworld/country,,HRW,,HUN,,3ae6a7e10,0.html> accessed 20 October 2011

⁵⁰⁴ Ibid.

Within this chapter we try to make and present a manifold examination: Firstly, we are going to show the most relevant facts and data related to the Roma people and Roma society, also addressing and listing the crucial problems and current processes. Secondly – using a mainly theoretical approach – we define the significant reasons behind the facts that cause and conserve the weakness of the Roma civil society. Thirdly, we present the current composition and main characteristics of the so called Hungarian Roma civil society. Fourthly, and finally, we make an attempt to collect the relevant plans, possible solutions and concerns regarding the development of this segment of Hungarian civil society.

This chapter does not undertake a holistic, or a totally general approach making an overview, a full review of the legal efforts and of the scope of duties of the current Hungarian government; rather it tends to manifest the relevant features, local colours and the contours of Hungarian Roma civil society. Nevertheless, it demonstrates the most relevant, newly enacted legal instruments and governmental programs launched in accordance with those laws, as well. It tries to present its statements with the aim of providing a statistically accurate, realistic overview of the situation of the Roma in Hungary, as well as details of all the efforts made by all the actors mentioned above to promote the social integration of the Roma.

In point of the terminology used, we have to admit that the term ‘Roma’ – within a European context – is used – similarly to other political documents of the European Parliament and the European Council – as an umbrella which includes groups of people who have more or less similar cultural characteristics, such as Gipsy, Sinti, Travellers, Kalé, Gens du voyage, etc. whether sedentary or not; around 80% of Roma are estimated to be sedentary [SEC(2010)400].⁵⁰⁵

10.2. Societal facts – Social indicators

10.2.1. Population

The Roma (also known as the Romany people or Gypsies) constitute one of the largest and poorest ethnic minority groups in Europe and are concentrated in the countries of Central and Eastern Europe. The number of the Roma population was about 4 million in Central and Eastern Europe in the early 1990s (Zoltan Bárány, 2002) and is 10–12 million nowadays in the entire area of Europe. Due to a high birth rate, the Roma population continues to grow, resulting in increasing population shares. In Hungary, the Roma are estimated to comprise (...) 10 to 12 percent of the young adolescent population (István Kemény and Béla Janky, 2006). The Roma have resided in Central and Eastern Europe for centuries, but their history has been characterized by separation and exclusion.⁵⁰⁶ Looking at the estimated Roma

⁵⁰⁵ EUROPEAN COMMISSION Brussels, 5.4.2011 COM(2011) 173 final. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – An EU Framework for National Roma Integration Strategies up to 2020.

⁵⁰⁶ Gábor Kertesi – Gábor Kézdi: The Roma/non-Roma Test Score. Gap in Hungary. *Budapest Working Papers on the Labour Market* (BWP) 2010/10. Institute of Economics – Hungarian Academy of Sciences – Department of Human Resources, Corvinus University of Budapest, Budapest, 2010. p. 5.

populations of 38 European countries, Hungary stands in the fourth place behind Romania, Bulgaria and Spain.

The Roma represent the largest minority among all the minorities living in Hungary today (roughly 6–9 percent of the total population). The real number of the Roma people, known also as ‘gypsies’, in Hungary is a disputed question. In the 1990 census, slightly more than 142,000 Hungarian citizens declared they were of Roma nationality. A decade later, in the 2001 census more than 190,000 Hungarian citizens declared they were of Roma nationality. The Hungarian Central Statistical Office (CSO) conducted the 15th census of Hungary in October 2011, 315,583 Hungarian citizens declared they belonged to the Roma community.⁵⁰⁷

However, the most authoritative estimates suggest that there are – at least – 400,000–600,000 Roma in Hungary, some minority organisations reckon the true figure is 700,000–800,000, and some even say the figure is close to one million. In a generally ageing and declining population, the Roma population shows a significantly younger trend. Since World War II, the number of Roma people is increasing rapidly, septupling in the last century. Today every fifth or sixth newborn Hungarian child belongs to the Roma minority. Estimates based on current demographic trends claim that in 2050 at least 15–20 percent of the population (1.2 million people) will be Roma.⁵⁰⁸

10.2.2. Divisions within the Hungarian Roma population

From a cultural and linguistic point of view the Roma living in Hungary can be divided into three major groups:⁵⁰⁹ the first and largest group is the so-called ‘Romungro’, a Hungarian Roma group, the native language of which is Hungarian. They constitute more than 87% of all Roma in Hungary. The second largest group comprises the Romany-speaking population called ‘Oláh Roma’. They constitute approximately 8% of the Roma population. The third group is the Bea Roma who live primarily in the South West of the country, speak an archaic form of the Romanian language. They represent approximately 5% of the population.

One can observe a gradual decline in the use of the native language among the Oláh and Bea groups.⁵¹⁰ In the past 33 years there have been three representative studies on the Hungarian Gypsy population: in 1971, at the end of 1993, and in the first quarter of 2003.⁵¹¹

⁵⁰⁷ http://www.ksh.hu/nepszamlalas/tablak_nemzetiseg>accessed 3 June 2014

⁵⁰⁸ http://encycl.opentopia.com/term/Hungary#The_Roma_minority>accessed 20 November 2011

⁵⁰⁹ Doncsev (n 502) 15.; see also: <http://www.nytd.hu/pp/heltai.html>>accessed 11 March 2014

⁵¹⁰ Ibid.

⁵¹¹ All three surveys included the total Gypsy population of Hungary. The 1971 study was coordinated by István Kemény; the 1993 one by István Kemény and Gábor Kertesi; and the 2003 one by István Kemény and Béla Janky. The 2003 sample selection plan and the questionnaire were prepared by István Kemény. The 1971 study and the 1993 study were carried out by the Institute of Sociology of the Hungarian Academy of Sciences; the 2003 study was part of the research programme entitled ‘The situation of the Hungarian Gypsy Minority at the beginning of the 21st century (segregation, income, education, and self government, within the framework of the National Research and Developmental Projects (NKFP)’, at the Institute for the Study of Ethnic-National Minorities of the Hungarian Academy of Sciences. For the most important findings of the project, see: Kemény (1976), Kemény and Havas (1996), and Kemény

Those studies use slightly different terminology, referring to the Hungarian-speaking Hungarian Gypsies, the Hungarian- and Gypsy-speaking (bilingual) Olah Gypsies, and the Hungarian- and Romanian-speaking (bilingual) Beas Gypsies.⁵¹²

10.2.3. Culture

The transition after the fall of the iron curtain had one single positive consequence for the Gypsies: they can freely practice their language and culture. If necessary, they can require an interpreter at court hearings or at the police, they can speak the Gypsy language, take a language exam, etc.⁵¹³

From the viewpoint of their language and culture the Roma population is a strongly divided minority, and thus measures have to be taken to preserve the linguistic and cultural diversity of these groups. In essence, the existing Roma communities are the last groups in Hungarian society in which folk art represents an integral part of everyday life.

Written literature is new to the Roma culture. One problem faced by the Roma culture is that it does not have a mother country which could support, culturally and financially, the Roma living in Hungary. However, recently a renaissance of discovering the many values of Roma culture emerged.

10.2.4. Problems

Regarding the health condition of the Roma people in Eastern European Countries it is enough to mention that in the case of Roma people the life expectancy is 10–15 years shorter than the one measured for the rest of the population.⁵¹⁴ The health status of Roma people⁵¹⁵ in Hungary is worse than that of non-Roma people.⁵¹⁶ There is much higher proportion of depression, cardiovascular and cancer-related diseases within the Roma community.⁵¹⁷

and Janky (2003a, 2003b, 2003c, 2004). [Béla Janky: The Income Situation of Gypsy Families. TÁRKI Social Report Reprint Series No 22. TÁRKI, Budapest, 2005. 3.]

⁵¹² Ibid. 5.

⁵¹³ Anna Kende – Eszter Szilassy: Identity and Assimilation of Ethnic and National Minorities in Hungary. <http://www.osi.hu/ipf/publications/eszters-minority.html>>accessed 20 October 2011

⁵¹⁴ Rixer, Ádám: Roma Civil Society in Hungary. *DIEIP* (2013) 7(1) 6.

⁵¹⁵ Their number is at about 700.000–900.000 in Hungary.

⁵¹⁶ Puporka Lajos – Zádori Zsolt: The Health Status of Romas in Hungary. NGO Studies No. 2, World Bank Regional Office Hungary, Budapest, 1999. 61.; *A roma lakosság helyzete Európában – a WHO HEALTH 2020 egészségpolitikai és egészségügyi stratégiai programjának prioritásai között. Népegészségügy* (2012) 90(4) 219–221.

⁵¹⁷ See also: Nagy Melinda: A roma populáció egészségi állapota a társadalmi válságjelenségek összefüggéseiben. [The Health Status of the Romani Population in the Context of Societal Crisis] *Economica: Szolnoki Főiskola tudományos közleményei* (2012) 5(1) 14–23; Nárai Márta: A perifériára szorult emberek egészségképe, egészségmagatartása. [Health representations and health behaviour among marginalized persons] *Szociális Szemle* (2013) 6(1–2) 151–155.

The Roma are facing social and economic difficulties almost in all the European countries. In brief, the main (but not the only) problems faced by most of the Roma people are: their weak healthcare state, their low educational possibilities, their poor housing conditions and the high-rates of unemployment and, as a consequence, the lack of revenues, all these being combined with multiple forms of discrimination they are suffering from, all leading to social and economic marginalisation and exclusion.⁵¹⁸ In short, all these cumulated problems create a vicious circle which is very difficult to break (*see more in subchapter 10.2.4.2. and 10.3.*).⁵¹⁹

The social and economic development of the Roma minority group represents one of the most delicate and controversial challenges that the Central and Eastern European countries (where the overwhelming majority of the Roma people live) have to deal with day after day. The poverty rate in these countries is ten times higher than the one measured in the case of the rest of the population. In the year 2000, World Bank statistics showed that 40% of the Roma living in Hungary were forced to subsist with less than 0.3 \$/day while in Romania and Bulgaria this percentage rose to 80%.⁵²⁰ According to these data, of the one million people on the lowest level of income, 280 thousand (i.e. 28 percent) probably belong to the Gypsy minority in Hungary. Among the poorest 300 thousand people the proportion of Gypsies is already 40 percent. According to the Gypsy Survey, probably 370 thousand (between 340 and 420 thousand) Gypsies belong to the poorest one million people. According to the latest data, two-thirds or four-fifths of the poorest 300 thousand people are Gypsies. That means 37 percent of Gypsies belonged to the lowest income stratum in

⁵¹⁸ Selected social indicators for the Roma and the non-Roma in Hungary

Roma Non-Roma

Education – secondary or more (percent of all adults)

16 74

Education – college or more (percent of all adults)

0.3 18

Employment to population ratio, men (percent of all adults)

32 57

Employment to population ratio, women (percent of all adults)

17 44

Unemployment rate (percent)

48 4

Live in rural area (percent)

40 35

Number of children born to women, age 15 to 19

0.19 0.04

Number of children born to women, age 40 to 44

3.4 1.9

Percentage of children in single-parent families

17 22

[Kertesi – Kézdi (n 506) 6.]

⁵¹⁹ *The Decade of Roma Inclusion 2005–2015 – One Year of Romanian Presidency (July 2005 – June 2006).*

The Government of Romania – National Agency for Roma, Bucharest, 2006. 6.

⁵²⁰ Ibid.

2004.⁵²¹ According to a study elaborated in 2012, 50% of the households with the lowest incomes are Roma households.⁵²²

Besides the low socio-economic status, the Roma also suffer due to the lack of resources and institutional means for articulating their needs and obtaining recognition for their claims.⁵²³ Although the problems the Roma face are well known and widely discussed, very little reliable data exist on which to form policy.⁵²⁴

10.2.4.1. Fertility

Compared to the typical age of 25–26 years of 15 years ago, Hungarian women today have their first child at the age of 27–28.⁵²⁵ The situation is quite different among the Roma population. The average age for a Roma woman to have her first child is 20 years, and there has been no noticeable change in this respect for the past few decades. Three in ten Roma women become mothers before they reach the age of 18 and around two-thirds have their first child at the age of 20 at the latest.⁵²⁶

The study on the link between Roma women's fertility and their chances of integration challenges the notion that unfavourable labour market conditions have the effect of increasing the number of children, and draws a more subtle picture.⁵²⁷ In a hopeless labour market situation, early child-bearing is 'the only path to adulthood, to earning the respect of others and to gaining self-esteem'.⁵²⁸ High fertility rates and child-bearing at a very early age are typical of the eastern region of Hungary. This makes it difficult, and indeed often impossible, for most Roma women to realistically consider continuing in education or getting a job, even if new education policies or better labour market opportunities make these options available.⁵²⁹

Parallely, a shocking data in this regard is that more than half (53.7%) of the Roma female population in Hungary over the age of 19, had at least one abortion according to the 2011 survey.⁵³⁰

⁵²¹ Janky (2005) (n 511) 12.

⁵²² *The situation of Romas in Hungary*. Policy Solutions, Budapest, 2012.. 22–24.

⁵²³ Nagy – Székely – Vajda (n 501) 1.

⁵²⁴ *Ibid.*

⁵²⁵ Spéder Zsolt: Gyermekvállalás és a párkapcsolatok átalakulása. [The changes occurred in the relationships and regarding the decision of having or not a child] 138. In: Kolosi Tamás – Tóth István György – Vukovich György (Eds.): Társadalmi riport [Social Report] TÁRKI, Budapest, 2004. 137–151.

⁵²⁶ Béla Janky: The Social Position and Fertility of Roma Women. 137. In: Ildikó Nagy – Marietta Pongrácz – István György Tóth (Eds.): *Changing Roles: Report on the Situation of Women and Men in Hungary* 2005. TÁRKI Social Research Institute, Budapest, 2006. 132–145.

⁵²⁷ *Ibid.* 133.

⁵²⁸ *Ibid.* 135.

⁵²⁹ *Ibid.*

⁵³⁰ Polónyi Éva: Vélemények és tények az abortuszról a roma nők körében. [Facts and Opinions about The Abortion Amongst Roma Women] Országgyűlés [Hungarian Parliament], Budapest, 2011. http://www.parlament.hu/biz/isb/tan/abortusz_roma_nok/abortusz_roma_nok.htm> accessed 22 May 2014

10.2.4.2. Education

In the past decades differences regarding education have grown between Gypsies and non-Gypsies in Hungary. On average 88 percent of the Hungarian non-Gypsy population aged 3–5 go to kindergarten, whereas this figure is 42 percent among Gypsies.⁵³¹ Many of these children of Roma origin are frequently sent to schools for the mentally and physically disabled if they go to school at all.⁵³² School segregation is also an especially burning problem, with many Roma children sent to classes for pupils with learning disabilities. Currently slightly more than 80% of Roma children complete primary education, but only one third continue studies into the intermediate (secondary) level. This is far lower than the more than 90% proportion of children of non-Roma families who continue their studies at an intermediate level. Less than 1% of Roma hold certificates obtained in higher education. Their low status on the job market and higher unemployment rates cause poverty, widespread social problems and crime.⁵³³

The test score gap between Roma and non-Roma 8th graders in Hungary in 2006 is approximately one standard deviation for both reading and mathematics, which is similar to the gap between African-American and white students of the same age group in the U.S. in the 1980s. After accounting for health, parenting, school fixed effects and family background, the gap disappears in reading and drops to 0.15 standard deviation in mathematics. Health, parenting and schools explain most of the gap, but ethnic differences in those fields are almost entirely accounted for by differences in parental education and income.⁵³⁴

10.2.4.3. Unemployment – Situation on the labour market

In the wake of the change of regime, more than half (72%) of the Roma population previously employed and capable of working lost their jobs.⁵³⁵ In the second half of the 1980s, following the change in the socio-economic system, the transformation of the Hungarian job market speeded up. There was a larger jump in unemployment among the Gypsy population at this time than among the non-Gypsy population. In addition, the large-scale job losses began earlier among Gypsies than in other groups.⁵³⁶

According to the 2008 Youth Policy Review in Hungary compiled by the Council of Europe, the Roma are the most disadvantaged group in the labor market. The majority live in small, underdeveloped settlements with poor infrastructure; the overwhelming majority (80 percent in 2003) live below the poverty line.⁵³⁷

⁵³¹ Janky (2005) (n 511) 12.

⁵³² *The Decade of Roma Inclusion* (...) (n 522) 6.

⁵³³ http://encycl.opentopia.com/term/Hungary#The_Roma_minority>accessed 20 October 2011

⁵³⁴ Kertesi – Kézdi (n 506) 3.

⁵³⁵ Doncev (n 502) 17.

⁵³⁶ Janky (2005) (n 511) 6.

⁵³⁷ Nagy – Székely – Vajda (n 501) 4.

10.2.4.4. *Settlement segregation*

The settlement segregation of Romas is significant and it has shown an increasing tendency in the past few decades. In 2003 six percent of registered Gypsy homes were situated in a Gypsy colony, two percent of them were far from a settlement, 42 percent were on the edge of a settlement, and 22 percent were inside a settlement, but exclusively, or overwhelmingly in a Gypsy environment. Thus, 72 percent of Gypsy families live in a segregated neighborhood⁵³⁸

10.2.4.5. *Human Rights Situation in Europe related to the Roma*

Many of the estimated 10–12 million⁵³⁹ Romas in Europe face prejudice, intolerance, discrimination and social exclusion in their daily lives. ‘Both the economic and human rights situation of the Roma started to become more visible in the European Union enlargement process which enabled a climate for a new reality check. Through the work of the Roma and other human rights activists it became clear that even the old Member States have done little to integrate Roma communities and even in countries with a small Roma population, Roma still suffer from the same discrimination reflected in poor or non-existent access to employment, healthcare services and education. Fortunately, in the old Member States, housing is less of an issue. However, Roma representation in decision-making structures and Roma self-organization is very limited as compared with the new Member States.’⁵⁴⁰

The protection of human rights in the accession process was downplayed to the cost of the social inclusion agenda and soon EU policy makers were confronted with the limited competence the Community has in addressing human rights violations such as forced sterilization, institutionalized segregation and other violations against Roma. As a result, these violations continue to take place even after joining the EU. Moreover, the hopes of Roma from the newest EU Member States, Romania and Bulgaria, for a better life in the European Union allowed by the freedom of movement, have been crippled because of limitations on settlement imposed by countries like Italy, France and the UK. The unpopularity of Roma in Europe, alongside with racial hatred and anti-Roma sentiment was magnified and gained legitimacy also inside the European Union, and Member States adopted discriminatory legislation and policies against the Roma.⁵⁴¹

10.2.4.5.1. *Human Rights Situation in Hungary related to the Roma*

The major social and structural upheavals in Hungarian society since the fall of communism, coupled with increasingly open discrimination, have had a disproportionately large and negative impact on the Roma, whose low social status, lack of access to education, and

⁵³⁸ Janky (2005) (n 511) 5.

⁵³⁹ EUROPEAN COMMISSION Brussels, 5.4.2011 COM(2011) 173 final.

⁵⁴⁰ Hard Times and Hardening Attitudes (...)

⁵⁴¹ Ibid.

isolation make them relatively unable to defend themselves and their interests.⁵⁴² ‘Reforms initiated by Hungarian politicians have often been undertaken without considering their devastating impact on the country’s Roma. The Roma suffer nearly total marginalization within Hungarian society: they are almost entirely absent from the visible political, academic, commercial, and social life of the country. Many Roma feel that the promises of the democratic political reform, so strong in 1989, have amounted to very little for them. (...) Roma remain on the periphery isolated, despised, and denied effective participation in the process that is shaping the new Hungary and the role of minorities within it.’⁵⁴³

10.3. Significant reasons that cause and conserve the position of the Roma civil society

Hungary achieved full membership in the European Union on May 1, 2004, yet this did not produce any immediate benefit for the majority or the minorities. The old problems, i.e. poverty, segregation and prejudice towards the Roma remained⁵⁴⁴ and it’s not enough to make partial and insignificant – mostly formal – modifications without touching the essence. So, what are the significant reasons that cause and conserve the position of Roma civil society – beyond and behind the facts mentioned in the previous sub-chapter?

- 1) In the last sixty years in Hungary several medium-term packages of measures or programmes having an effect on the Roma in the short run have been passed by the governments. However, to find a solution to this complex problem of the social integration of the Roma, it’s obvious that only complex and long-term packages of measures – concretized within the government’s annual action plans – will be able to reach any goals concerning that issue. Unfortunately, the traditional way of implementation of decisions of public policy tends to eliminate or omit the monitoring phase of those measures, which means that many processes begin but do not get finalized. That’s why – for instance – decision have been made several times in the matter of the ‘mop-up’ of Gypsy colonies (ghettos) in Hungary, but all these efforts have failed within a period of a few years... Consequently, any real changes need consistent and consequent intentions operating beyond budgetary periods and electioneering.
- 2) One of the most important shortages is the lack of those ‘advocacy groups’ and civil entities that have risen up within the majority of the Hungarian society, attempting ‘to educate the general public as well as public policy makers about the nature of problems, (...) and the funding required to provide services or conduct research’.⁵⁴⁵ The lack of these groups, entities and movements inside the majority

⁵⁴² <http://www.unhcr.org/refworld/country,,HRW,,HUN,,3ae6a7e10,0.html>>accessed 20 October 2011

⁵⁴³ Ibid.

⁵⁴⁴ Erika Törzsök: Foreword. In: Ernő Kállai – Erika Törzsök (Eds.): *A Roma’s Life in Hungary. Report 2004: Stagnation*. Public Foundation for European Comparative Minority Research, Budapest, 2005. 7.

⁵⁴⁵ Dean G. Kilpatrick, Ph.D.: *Definitions of Public Policy and the Law*. National Violence Against Women Prevention Research Center Medical Univ. of South Carolina, 26. <http://www.musc.edu/vawprevention/>

of the Hungarian society is at least partly veiled by the efforts made by different governmental bodies, Roma self-governments and international entities dealing with discrimination in the field of human rights, etc. The intrinsic ‘social integration of the Roma and the improvement of their living conditions are of national interest and are the duty of the society as a whole’.⁵⁴⁶

3) *The crucial issue: formation of a Roma middle class. The missing element*

Soon after the regime change of 1989 the self-organizing of ethnic and cultural minorities and of civil society in general was made possible, and a great number of Roma organizations were formed, joining a few other established organizations that had a special concern for Roma. Nevertheless, given the small size and isolated position of a middle-class elite, the level of organizing in the Roma population at large remains very low.⁵⁴⁷ The social activism by Roma is instrumental in community development as well as in improving inter-ethnic relationships and social solidarity.⁵⁴⁸ It provides a means to fight against existing social divisions and growing hostility between Roma and non-Roma as well as against the pervasive ethnic segregation of the Roma (which is present in nearly all areas of social life, especially housing and education).⁵⁴⁹ The younger generation of Roma has a particularly crucial role in the formation of a politically self-conscious, effective, and powerful Roma elite that may become able to protect the interests of the Roma population as well as change the social majority’s perception of the Roma.⁵⁵⁰ Thus, the organizational opportunities and patterns of Roma youth as well as their participation in majority youth organizations represent an important field of several studies published in the last few years in Hungary.⁵⁵¹

4) During the first decade after the fall of the iron curtain ‘both the authorities and independent philanthropists thought that multiculturalism, and the stabilization of a Roma elite are the major primary tools usable for the social emancipation of the disadvantaged (...) [but in] the 2000s the multicultural approach as a central goal got more and more critical reflections and classical social policy considerations started to play a more straightforward role’.⁵⁵²

Actually, multiculturalism has been a pillar of European ideology for decades, and remained so in Hungary after the fall of the iron curtain, too. However, many statements within many European states have been made in the last few years declaring an end to the old concept of multiculturalism⁵⁵³ and to ‘the passive tolerance’

policy/definition.shtml/>accessed 13 February 2012.

⁵⁴⁶ Doncsev (n 502) 1.

⁵⁴⁷ Nagy – Székely – Vajda (n 501) 1–2.

⁵⁴⁸ Ibid.

⁵⁴⁹ Ibid.

⁵⁵⁰ Ibid.

⁵⁵¹ Ibid.

⁵⁵² Pál Tamás (ed.): Final report: 6. Hungary. Inclusion and education in European countries. INTMEAS Report for contract –2007–2094/001 TRA–TRSP. DOCA Bureaus, Lepelstraat, 2009. 10.

⁵⁵³ http://www.redstate.com/dan_mclaughlin/2010/10/18/merkel-multiculturalism-doesnt-work/>accessed 22 June 2014

of divided communities, and saying that members of all nationalities, minorities and faiths must integrate into the wider society and accept core values.⁵⁵⁴ The debate over issues of assimilation and cultural tension generally, and specifically over the extent to which the Roma can or should be integrated into a pluralistic society has been just started in Hungary.

‘[...] while under state socialism the Gypsies mainly represented a deprived social stratum, in the new system they came to be defined as an ethnic group or a people. [...] Images about Gypsies are both changing and perennial, and still range between the two ideal typical poles of an ethnic/racial and a social definition.’⁵⁵⁵

- 5) While their unique customs, traditions, and languages are valuable cultural patrimony to Hungary, cultural differences can hinder their inclusion into Hungarian society. In this respect, one particularly important area where such differences may become a hindrance is education.⁵⁵⁶ For instance, Forray argues that ‘The bringing up and the education of children inside the family is a living part of Roma traditions today. On the other hand, the participation in public education does not generally belong to these’.⁵⁵⁷
- 6) In accordance with the official standpoint in Hungary, there shan’t be a twofold or doubled society: there is and must be only one. That statement also means that there can’t be a ‘Roma crime’ parallel with the ‘Hungarian crime’, even if everyday life’s common speech frequently uses that notion. Moreover, the contemporary ‘politically correct’ way of speaking requires the usage of notions like poor and rich, instead of Roma and Majoritarian Hungarian, etc. The problematic element of absolutization of such a way of thinking is that it interferes with the elementary claim for the knowledge of those situations and affairs in which words such as Gipsy (cigány) or Roma are to be used or are allowed to be used without any discriminative effect. Without such a consensus the usage of these terms easily leads to distrust or overreaction in everyday life.
- 7) The last two decades could be characterized by a fierce battle between competing ethnic political actors whose aim is to gain the votes of the Roma. Moreover, it happened not just within the Roma community, but major political parties of Hungary (among which there is no Roma party) also treated as a loot (quarry) that could be got during the electioneering but which is a ‘phenomenon’ of no interest before and after.
- 8) The notion of ‘ethno-business’⁵⁵⁸ refers to ‘any practice that seeks to take unfair advantage of the existing legal framework for the protection of national minorities in

⁵⁵⁴ <http://www.powerlineblog.com/archives/2011/02/028291.php>>accessed 16 August 2014

⁵⁵⁵ Binder Mátyás: Changes in the Image of ‘Gypsies’ in Slovakia and Hungary after the Post-Communist Transition. *Vlaams Marxistisch Tijdschrift* (2011) Vol. 45 No. 2, 14–23.

⁵⁵⁶ Kiss Sándor Csaba: The Influence of the European Union on Domestic Roma policies in Hungary. Master Thesis. CEU, Budapest, 2007. 12.

⁵⁵⁷ R. Katalin Forray: The Situation of the Roma/Gypsy Community in Central and Eastern Europe. Master Thesis. CEU, Budapest, 2006. 6.

⁵⁵⁸ See also: Andrew Burton: Minority Self-governance: Minority Representation in Flux for the Hungarian

order to obtain material, financial or political gains'.⁵⁵⁹ Other terms used to describe the phenomenon include 'ethno-corruption', defined as 'the abuse of remedial measures for private gain in a manner contrary to the legislators' intentions',⁵⁶⁰ and 'minority business', emphasizing the misuse of people's – sometimes only alleged – minority identity for the sake of political or economic ambitions.⁵⁶¹

Behind the increasing number of minority self-governments in Hungary (reaching a total of 2321 in 2010) many researchers suspect also manipulations connected to ethno-business.⁵⁶²

- 9) The process of policy-making and formulating of politics was not primarily built on institutional forms of a participatory democracy, but exclusively on Parliament-centered means, i.e. political parties having seats within the Parliament. In addition, the Roma are under-represented in the national assemblies of central and Eastern European states.⁵⁶³

Referring to the legislative process in Hungary, we have to add that – under the provisions of the current Hungarian law – public negotiation is statutory only in those cases in which the bills are introduced by the Government; it's easy to avoid this obligation by bills formally introduced by MPs belonging to the governing party or parties. Unfortunately, this solution has become an ordinary, daily practice in Hungary which is a grievous obstacle for those individuals and groups of citizens that do not have a strong ability to enforce their interests by lobbying.

Though both the former Constitution of the Republic of Hungary and the Fundamental Law (Basic Law) of Hungary that came into force on the 1st of January, state that the national and ethnic minorities living in Hungary, and thus the Roma minority too, 'share in the power of the people and constitute part of the state', the Roma seem to be less important citizens in everyday and public life. Though both the previous Constitution and the new Basic Law guarantee the minorities – beyond elementary rights such as the right to nurture their own cultures, the use of their mother tongue, education, and the right to use their names in their own languages – the right of collective participation in public life, they are almost entirely absent from the visible political, academic, commercial, and social life of the country either as individuals or as a group.

The Roma living in Hungary are Hungarian citizens, the situation of the Roma is not aggravated by unsettled citizenship relations, and on the verge of state

Roma. *Ethnopolitics* (2007) Volume 6, Issue 1, 67–88.

⁵⁵⁹ Andreea Carstocea: Ethno-business – the Manipulation of Minority Rights in Romania and Hungary. 1. http://discovery.ucl.ac.uk/1322708/1/Carstocea_Chapter%20Two.pdf>accessed 17 February 2012

⁵⁶⁰ Pap András László: Human Rights and Ethnic Data Collection in Hungary. *Human Rights Review* 2008/9. 114.

⁵⁶¹ The Situation of Minorities in Hungary. Hungarian Helsinki Committee, Budapest, 1999. 27. http://www.minelres.lv/reports/hungary/hungary_NGO.htm>accessed 30 January 2012

⁵⁶² Cultural diversity and inclusion policies. <http://www.culturalpolicies.net/web/hungary.php?aid=424>>accessed 21 April 2012

⁵⁶³ Aidan McGarry: Ambiguous nationalism? Explaining the parliamentary under-representation of Roma in Hungary and Romania. *Romani Studies* (2009) Vol. 19, Issue 2, 22.

measures directed at the creation of equality of rights and equal opportunities, the system of legal regulation ensures the rights of all citizens, and within this the rights of minorities, without distinction.⁵⁶⁴ Nonetheless, even though there's a well formed and stable system of legal institutions (e.g. Commissioner for Fundamental Rights; Deputy-Commissioner for Fundamental Rights, responsible for the Rights of Nationalities;⁵⁶⁵ Equal Treatment Authority;⁵⁶⁶ parts of the newly shaped Hungarian judicial system; Constitutional Court; Police) making the fundamental human rights enforceable, the formal existence of these guarantees does not ensure the factual usage of them by those who are deprived in many ways, lacking even the knowledge (awareness) of their own rights.

10) Discrimination against Roma in Hungary

One of the most significant human rights problems in Hungary is the prejudice and discrimination against the Roma in numerous fields of life: education,⁵⁶⁷ gender,⁵⁶⁸ employment,⁵⁶⁹ sports,⁵⁷⁰ culture⁵⁷¹ and so on. The measures taken by different governments in Hungary in the last two decades will be briefly listed and evaluated in the next sub-chapter.

In addition, we have to mention that the attention focused upon Roma populations by European institutions and organisations⁵⁷² appears to offer ways to address long standing inequalities for Roma. This process appears challenging and slow and is further complicated by broader pressures upon EU states as a result of the recent and ongoing financial turmoil.

⁵⁶⁴ Doncsev (n 502) 30.

⁵⁶⁵ Ernő Kállai, the Deputy Ombudsman responsible for the Protection of the Rights of Nationalities living in Hungary attempted to conduct comprehensive inquiries in the reorganised Ombudsman's Office. According to the plans, the Deputy Ombudsman analysed the contradictions of legal regulations, the special circumstances relating to nationalities and the state of affairs regarding the cultural autonomy of the nationalities. Starting from 1995, the annual report of the ombudsman for minority rights has appeared regularly. The so-called "White Paper" (published by the Legal Defence Bureau for National and Ethnic Minorities) presenting actual cases of discrimination against the Roma also appeared first in 1995. <http://www.obh.hu/allam/eng/index.html>>accessed 1 December 2011

⁵⁶⁶ The Equal Treatment Authority [*Egyenlő Bánásmód Hatóság*] conducts proceedings if the principle of equal treatment might have been violated either at the request of the injured party or upon its own motion (*ex officio*) in cases set forth by law in order to establish whether any discrimination occurred.

⁵⁶⁷ See more: Angela Kocze: Policy Paper: Roma Youth Participation in Higher Education. Open Society Institute, Budapest, 2001. www.osi.hu/ipf/>accessed 8 January 2012

⁵⁶⁸ See more: Angela Kocze: Ethnicity and Gender in the Politics of Roma Identity in the Post-Communist Countries. In: Sanja Bahun-Radunovic – V. G. Julie Rajan (eds.): *The Intimate and the Extimate: Violence and Gender in the Globalized World*. Ashgate Press, Farnham, 2008.

⁵⁶⁹ http://www.neki.hu/index.php?option=com_content&view=section&layout=blog&id=14&Itemid=91>accessed 1 May 2012

⁵⁷⁰ <http://www.polgaralapitvany.hu/>>accessed 12 May 2012

⁵⁷¹ http://www.kethanodrom.hu/index.php?option=com_content&view=article&id=2000:integration-of-roma-stalled-by-eu-financial-climate-study-finds&catid=101:koezertdek-levelek&Itemid=121>accessed 13 May 2012

⁵⁷² http://eur-lex.europa.eu/en/dossier/dossier_54.htm>accessed 1 May 2012

10.4. The composition of Roma civil society according to the types of organisations

The transition process towards democracy in Eastern Europe implies a complete overturn of the society. It is often referred to as a transformation process in which the society has to rearrange itself from below instead of organizing society from above by authorities. As it was referred to in the previous sub-chapter, one of the most important questions is whether different Roma leaders, groups and organisations are able to initiate and stimulate those transformation processes and to what extent. There are many aspects through which the elements and stages of this transition towards a healthier, even financially self-sustainable Roma civil society can be introduced; within this sub-chapter we would like to address that core issue by showing the composition of the Roma civil society according to visible and registered organisations (institutions) having an important role within the transition of the Hungarian Roma society in the last two decades in Hungary. The aim of this sub-chapter is to draw an outline of the shape, extent and features of the so called Roma civil society and its entities in the last twenty-plus years.

Actually, those organisations that are to be shown are influencing one another in many ways also, many overlaps could be found regarding the founders, sponsors and volunteers: our task is just to reveal – without calculating and evaluating the real importance of – those associations, foundations, community houses or halls of residence, etc., that serve as agents of that inner transformation within Roma communities.

This analysis makes it clear that organisations dealing with Roma issues supporting those communities are still mainly and overwhelmingly international entities or quasi (non) governmental organ(isation)s.

10.4.1. Building up Roma civil society from outside

‘Civil society building is an endogenous development process. International actors can (and should) create a framework in which a domestic civil society could operate and develop, but cannot establish civil society themselves and what is more, they should refrain from creating it. This should be done by local citizens. The same holds true for authorities in these countries. Their role is to promote civil society development by creating a proper legal framework in which civil society can develop by itself. States should guarantee the freedom of association for citizens, and create a free market where civil society could secure its own financial resources. This is a particularly sensitive issue since communist governments of Eastern Europe have a legacy of engineering civil society by establishing so-called ‘GONGOs’ (Government-Organised Non-Governmental Organisations), which are not at all independent from the state [*see more in Part III, subchapter 3.1.*]⁵⁷³

Many countries in the Eastern European region had their pre-Communist institutional inheritances upon which to build democracy, and with which the desirable patterns of be-

⁵⁷³ Thomas Carothers: *Aiding Democracy Abroad: The Learning Curve*. Carnegie Endowment, Washington, 1999. 40.

havior and organizational forms could be established and nurtured. Notwithstanding, the pressure of external – governmental and nongovernmental – actors was so intense, that those ‘ancient’ examples and institutions were neglected or at least marginalized in most of the cases: the East European region was virtually ‘invaded’ by many NGOS, experts and consultants.⁵⁷⁴

10.4.1.1. International actors

Thousands of transnational NGOs⁵⁷⁵ have been identified in Hungary and there are hundreds that tackle Roma issues with different types of support, mostly in the field of human rights and education. The best-known is the SOROS Foundation (e.g. its *Roma 886 Programme*⁵⁷⁶).

The phenomenon has a twofold implication. A confluence of factors – the lowering of political barriers after the end of the cold war, new information and communications technologies, lowered transportation costs, and the spread of democracy – has created a fertile ground for nongovernmental groups to widen their scope and form multi-country links, networks, and coalitions:⁵⁷⁷ on the one hand, these opportunities created an environment in which financial support could be reached more easily, but on the other hand these donations debilitate inner mechanisms of solidarity, cooperation and initiation, though it’s not impossible to take over the lead of those programmes that were backed by others, especially by international entities.

We have to admit that increasing international attention is focused on the situation of the Roma. International organizations are continually engaged in analysing the living conditions, the situation of human rights of the Roma living in Hungary, also giving support by organizing conferences, meetings and calling society’s attention to the facts revealed.

10.4.1.2. Quasi nongovernmental organisations

There are several ‘Roma’ civil organisations that are not totally independent of the state, or a certain governmental body. Some of these were founded by the state and financed via the state budget (e.g. public foundations), others were established by Roma citizens through an election process, though the institution (the legal form) was created and constantly supported in many ways by state organs (Roma self-government). Both can be characterized by performing public duties, which entitles them to use the financial sources of the Hungarian State (Hungary).

⁵⁷⁴ Ibid.

⁵⁷⁵ NGOs based in one country that regularly carry out activities in others.

⁵⁷⁶ <http://www.soros.c3.hu/2000/prog2000.htm>>accessed 31 October 2013

⁵⁷⁷ Carothers (n 573) 5.

10.4.1.2.1. Self-Government

The National Gypsy Self-Government is one of the main advocacy bodies of the Roma people. Act LXXVII of 1993 on the Rights of National and Ethnic Minorities ensured – in a manner unique in European practice – the 13 minorities that are native to Hungary individual and collective minority rights, the right to personal autonomy and the right to establish self-government bodies. The Act gave the minorities the right to form local and national self-governments. The minority self-government is a completely new legal entity, one of the latest elements of the Hungarian public law system.

As far as the minority self-governments are concerned, the achievement of cultural autonomy means the right – enshrined in the act – to independently decide in their own sphere of authority on the establishment, take-over and maintenance of institutions, in particular in the areas of local public education, local press and electronic media, the preservation of traditions and in culture.

The first minority self-government elections took place in 1994–1995, at the same time as self-government elections. All the electorate in a given settlement are allowed to participate in the elections, and may vote for the given minority candidate. During the first parliamentary term a total of 738 minority self-governments were formed. Of these, 477 were Roma minority self-governments, giving nearly 1,500 Roma a role in public affairs.⁵⁷⁸ The number of the Roma self-governments was 1117 in 2006 and 1252 in 2010.⁵⁷⁹ The procedural rules and the tasks of these self-governments have been slightly changed by the simplification of the system [Act CLXXIX of 2011 on National Minorities].

10.4.1.2.2. Public Foundations and their successors

A) Public Foundation for Gypsies in Hungary

The Public Foundation for the Gypsies in Hungary was the most important distributor of funds in the Roma segment for many years from the nineties. The government established the foundation in order to support the preservation of the identity of the Roma living in Hungary, promote social integration, reduce Roma unemployment, increase the opportunities in education both inside and outside school, and protect human rights, all in the interest of creating equality of opportunity. Its main areas of activity included supporting agricultural-type initiatives designed to provide a livelihood for the Roma living in villages as well as the realistic business schemes of Roma small entrepreneurs, to finance such programmes which promote the advancement of the studies of Roma children, and to establish a prejudice-free legislation and a minority-friendly social atmosphere.

⁵⁷⁸ Doncsev (n 502) 30.

⁵⁷⁹ Source: National Election Office <http://www.valasztas.hu>.>accessed 22 November 2011

B) Public Foundation for National and Ethnic Minorities in Hungary

The Public Foundation for National and Ethnic Minorities in Hungary provided the single largest amount for the cultural programmes of the national and ethnic minorities. Its operation was required because of the demands and the political and social significance of the state public task.⁵⁸⁰ Representatives from all 13 minorities in Hungary took part in the work of the board of trustees. The President of the Office for National and Ethnic Minorities also acted as the chair of the trustees of the Public Foundation.

C) The Gandhi Public Foundation

The aim of the Gandhi Public Foundation (established: 1995) is the maintenance of pre-schools, primary and secondary schools through the foundation and to promote the training of open-minded young Roma who are responsive to sciences and are attached to their people and mother tongue. The Public Foundation operates the exemplary Gandhi High School and Halls of Residence in Pécs, which had 183 students in 2012.

The school functions as a six-class high school. 95% of the students are Roma, and thus the school receives supplementary minority funding from the state budget. The Gandhi High School aims to become a multicultural educational institution. It wants to bring up committed intellectuals interested in Roma affairs. Since in the school's specified catchment area the majority of residents speak the Beash language, Beash and Romany languages and cultures are taught in the school, and English and German as foreign languages.

In 2012 the Wekerle Sándor Fund Management of the Ministry of Public Administration and Justice took over the tasks (public duties) earlier fulfilled by the Public Foundation for Gypsies in Hungary and the Public Foundation for National and Ethnic Minorities in Hungary. The Gandhi Public Foundation has also been changed, the 27 founders transformed it into Gandhi Public Benefit Nonprofit Limited Company (Gandhi Közhazsnú Nonprofit Korlátolt Felelősségű Gazdasági Társaság). The official aim of these reforms was to centralise financial sources, and make them more effective and reachable

10.4.1.2.3. External support for non-Roma civil entities

Of course, in addition to the mechanisms established and financed by the state and besides the civil entities constituted from outside Hungary and financed from non-Hungarian resources, there exist civil organisations – that are called 'real' civil society – operated by the majority, which are also engaged in the issues regarding the solutions that try to offer constructive support to the Roma minority. Of course, – lacking the registered data – it is difficult to separate those civil organisations that have been established by Romas from

⁵⁸⁰ As an example the government provided the Foundation with HUF 395 million in 1997, HUF 474 million in 1998, and HUF 530 million in 1999 in order to realize its objectives.

those that have been constituted by non-Roma civilians. An interesting aspect of the overall picture is that beyond the civil organisations that support the Roma, most of the time there is a well-known – and generally wealthy – person.⁵⁸¹

10.4.2. The ‘real’ Roma civil sector⁵⁸²

The next step is to examine those ‘real’ civil organisations within the Roma civil sector that came into existence by the will of Roma people and communities.

10.4.2.1. Human rights, community building

There are several human rights civil organizations and charitable associations in Hungary which undertake to represent the interests of the Roma minority. Among them it is worth mentioning the political, human rights and legal aid activities of Lungo Drom, the Roma Civil Rights Foundation,⁵⁸³ the Roma Parliament,⁵⁸⁴ the Phralipe Independent Roma Organization, and the Professional Association of Roma Leaders,⁵⁸⁵ Másság (Being Different) Foundation⁵⁸⁶. The above mentioned social organizations play a significant role in looking

⁵⁸¹ See for example point e) of the subchapter 10.5.2.

⁵⁸² Nagy Ádám – Székely Levente: The Youth Civil Sphere. *Civil Review* 2008/1–2. 136.

⁵⁸³ Roma Civil Rights Foundation [*Roma Polgárjogi Alapítvány*]: Representation of and legal defense for Roma groups and individuals (regardless of age), coordination of Roma communities, organization of cultural activities.

⁵⁸⁴ Hungarian Roma Parliament maintains institutions; collects Roma artwork and literature; publishes a magazine, and organizes artistic and cultural programs to change the social situation of the Roma population in Hungary and preserve its cultural identity; provides representation and legal consultancy, informs and coordinates local Roma civil self-organizations.

⁵⁸⁵ Also mentioned as the Professional Union of Roma Leaders. The Union was formed in Debrecen in 1995, with the aim of organizing training for the Roma population resident in the region, and providing interest-protection and legal representation and services for conflict and crisis resolution programmes. Their training courses cover the public and professional work of the local Roma self-governments and civil organizations. An employment group – which, under the management of qualified employment organizers, has arranged training courses for young Roma – was established with the cooperation of the County Regional Labour Workforce Development Centre. The Union also operates the Roma Pedagogical Advisory Service. With the involvement of a media trainee in the organization, the Union takes part in editing regional radio programmes and publishing its own newspaper called ROMINFO. In the frame of the local crisis resolution and prevention programmes it provides regular legal aid services and legal advice also.

⁵⁸⁶ The Foundation was launched in 1993, and has since examined thousands of complaints. It works with a network of lawyers and experts extending throughout the country. Its aim is to examine fully and objectively all the facts surrounding acts of discrimination perpetrated against Roma. A publication entitled the White Notebook is published every year detailing the work of the Foundation. It is available in Hungarian and English. The office’s operational costs are covered from international and domestic tenders. It engages in close cooperation with government and civil organizations in the interest of creating a discrimination-free society. Both its efforts and its activities are in complete harmony with the anti-discriminatory tasks of the medium-term package of measures.

after the interests of the Roma minority, but most of them do not provide direct legal representation for the affected parties. Several entities serve as ‘complex’ service providers; e.g. ‘Bogdán János’ Roma Community House in Nagykanizsa is a good example.⁵⁸⁷

There are also several organizations managing conflicts and building consensus between Roma and majority groups in Hungary that provide their services not only for gypsies.⁵⁸⁸ Moreover, Khetanipe Association for Roma Solidarity (Khetanipe Romano Centro), in cooperation with Roma and non-Roma civil organizations and state institutions, aims to treat societal and individual problems and address the disadvantages of Roma through programmes based on voluntary work in several areas: child and youth education; reinforcement of Roma ethnic identity; the teaching of Beash language; preservation of Roma culture; promotion of communal life; improvement of living conditions of Roma people, defense of their rights; drug prevention; and education in healthy lifestyle.

10.4.2.2. Youth and education

10.4.2.2.1. Roma Youth Organizations

We have very little information about Roma youth organizations.⁵⁸⁹ Such dearth is attributable, in part, to the lack of comprehensive research on youth organizations in general; and, in part, to the fluid nature of Roma youth.⁵⁹⁰ Many young Roma drop out of school and quickly become categorized as adults. Therefore, we must rely on estimates. Studies carried out by the National Youth Research Institute (NYRI), based on unpublished data of the Central Statistical Office (CSO) for 2005, suggest that roughly 500–600 civil organizations operating in Hungary include Roma in their target population. A large number of these groups are not organizations of Roma youth, rather, they are majority organizations aimed at helping Roma young people.⁵⁹¹ Roma youth organizations, in turn, have a large

⁵⁸⁷ The Community House was established on the initiative of the Nagykanizsa County Town Roma Self-government in 1997. Its purpose is to provide the Roma and non-Roma inhabitants of the area with a variety of different services. The activities of this multifunctional institute range from providing information on cultural, educational, employment and health matters, on home nursing programmes, and the provision of legal and other advice. The important charitable influence the Community House exerts extends not only throughout the local Roma community, but actually far beyond this to the wider community. It works to reduce prejudices, cultivate an understanding of the values of Roma culture, and its programmes have led to a variety of cooperative contacts.

Weekend classes in folk identity (organized in cooperation with the town’s primary schools) were introduced at the day-care centre. Roma specialists teach in this educational programme.

⁵⁸⁸ Partners Hungary Foundation is a good example.

⁵⁸⁹ Typically, Roma youth organizations depend heavily on local self-governments and minority local self-governments.

⁵⁹⁰ Civil youth organizations are unique because their constituency is ‘time limited.’ One can be an environmental or human rights activist all of one’s life; however, every individual will ultimately ‘age out’ of a youth organization. Consequently, the world of civil youth organizations is ever-changing.

⁵⁹¹ Network of Youth Experts Initiatives [*Ifjúságügy Szakértőinek Társasága*, ISZT]: This network of cooperating professionals, engaged in research, publishing, preparation of course materials, collection

non-Roma membership. Every third young person attending the programs organised by Roma organisations comes from the majority society: this fact demonstrates the openness of Roma organizations.⁵⁹² Programs designed to encourage intercultural dialogue and learning between Roma and non-Roma young people include leisure activities (e.g., sports programs, trips); cultural programs (e.g., cultural quiz competitions, media programs); and student exchange programs.

One of the most important findings of the researches related to this field is that the self-organization of Roma youth is rudimentary. Other findings include that the active members of Roma youth groups are older on average than those of youth organisations in general and that Roma organizations are directly involved in starting initiatives for young people only on a local level. European experts have concluded that the initiatives launched by governments and the majority society are not always successful because the Roma often 'did not react in the expected way to these proposals; thus, majority representatives frequently (even personally) expressed their disappointment and withdrew the proposals citing the unwillingness of the Roma to cooperate as their justification.'⁵⁹³

Beyond the organizational opportunities and patterns of Roma youth, their participation in majority youth organizations is to be an important field of research in the near future as well.

Key actors in the civil youth sector – among others – include the following groups:⁵⁹⁴ Inner Fire Association (Belső Tűz Egyesület)⁵⁹⁵ National Association of Young Roma (Fiatal Romák Országos Szövetsége, FIROSZ),⁵⁹⁶ Association for the Protection of the Interests of the Elderly and Young Roma (Roma Idősek és Fiatalok Érdekeit Védő Egyesület), Foundation for Roma Children (Romagyermekéért Alapítvány).

10.4.2.2.2. Education and culture

Education is closely connected with younger generations: the strong interdependence is obvious. As it has been already mentioned above, those educational, pedagogical and training methods and institutions turn out a success that are able to provide a complex service and care, avoiding dropout which is the most dangerous and frequent symptom among Roma pupils. Let's briefly enumerate the most successful Hungarian examples!

The best-known Roma educational institution in Hungary is the Gandhi High School and College, which is the first Roma minority high school in Hungary and in Europe which

of documents, and organization of events, is one of the most important civil initiatives in the youth segment.

⁵⁹² Kiss Paszkál – Kovács Szilvia – Máder Miklós: *Roma Youth Organizations in Hungary*. GYISM Mobilitás, Budapest, 2004. 37.

⁵⁹³ Nagy – Székely – Vajda (n 501) 5.

⁵⁹⁴ Information on some of these groups is extremely limited.

⁵⁹⁵ Provides assistance to Roma students, youth, and the elderly in education, interest representation, and employment; also operates a specialized high school for Roma students.

⁵⁹⁶ Aims to ensure secondary and college education for Roma youth by providing scholarships for talented students from disadvantaged backgrounds.

offers a graduation certificate. The high school was established in 1994 by the Gandhi Foundation. The purpose of its establishment was that 'in the medium term a significant number of Roma people become intellectuals, able to reorganize the shattered Roma communities'.

While the Gandhi Halls of Residence are integrally linked to the Gandhi High School, there are halls of residence, which accommodate young Roma attending different secondary schools. Such an establishment is the Collegium Martineum (in Mánfa),⁵⁹⁷ founded in the summer of 1996 by the Alsószentmárton Roman Catholic Congregation, the Witten St. Marthin Charity, the Pécs Diocese Charity, the Amrita Student Circle and three private individuals in order to look after and provide an opportunity for disadvantaged children to pursue studies at the better secondary schools, and then later at universities or colleges. Szent Márton Pre-school also operates in Alsószentmárton; the school – maintained by the Pécs Diocesan Authority – implements a Catholic, Roma nationality pedagogical programme, which is person-centric and builds on the values of Roma families. The 74 children attend the pre-school study in two languages (Hungarian and Beash) which are continually used in everyday life. The head of the institution and the majority of the staff in the pre-school speak these two languages. The aim of the pedagogical programme is to strengthen the children's sense of identity and to prepare them for primary school.

Another type of residential hall is the one which serves to provide accommodation for pupils attending primary schools. The 'Kedves House' next to the Nyírtelek Primary School is such a tried and tested model. The local self-government maintains the school, but since the support thus available cannot cover all the institution's costs, the school resorts to financial resources available through tenders. It is an eight-class primary school with both Roma and non-Roma pupils. The institution brings up the children in a spirit of tolerance and coexistence with the aim of seeing the majority of its alumni win places in secondary education. The halls of residence are available to those children who come from severely disadvantaged backgrounds and who, through their studies, show particular promise. The school has a special Roma programme whereby children are brought up to a unified level in a separate class for the first two years, and then from the third year they are integrated with the other children.

The establishment of the Roma Opportunity Alternative Foundation Vocational School (Szolnok)⁵⁹⁸ is unique of its kind: it was the first time that the Roma took their future into their own hands and established an educational institution, which provides an opportunity not only for Roma but also for non-Roma young people in similarly difficult circumstances. At the end of 1996 a group of specialists brought together with the assistance of the National Roma Self-government started to formulate the concept of establishing a school which would offer an alternative to those children who drop out of school but are still in the age when they have to attend school. It provides the opportunity for Roma and non-Roma young people who have dropped out of secondary school training to improve their opportunities of finding work and making a livelihood through vocational skill training.

Among the high schools designated for Roma children and young people an important institution is the Kalyi Jag Roma Minority and Computer Science School in Marcali.

⁵⁹⁷ Collegium Martineum Középiskolai Tehetséggondozó Kollégium.

⁵⁹⁸ Roma Esély – dr. Hegedűs T. András Alapítványi Középiskola, Szakiskola és Kollégium.

The Türr István Institute of Training and Research was also established primarily on behalf of those Roma who are undereducated or disadvantaged in access to different training and educational sources. The Institute – governed by the Ministry of Human Resources – provides several vocational trainings for Romas.

As it could be seen above most schools and halls of residence have been founded and maintained by non-Roma organisations (typically foundations, local governments or churches⁵⁹⁹) or non-Roma persons. Nevertheless, these entities – in many ways – serve as initiators of Roma self-organizing and launch those programs that ‘channel’ different forms of self-expression and identity building, etc., with the help of which the next generation will be able to take part in the continuation of those programs actively (as Roma teachers, lawyers, etc.).

A good example of the substantive bilateral cooperation is the ‘Eötvös József’ Hungarian – Gypsy Education Association, which has significant results in the development of teaching methodologies, as well as in the implementation of the programs launched in the field of the equality of chances.

Beyond Roma Opportunity Alternative Foundation Vocational School some other educational projects and institutions have been launched by Roma people, one of which is the renowned Hungarian jazz guitarist Ferenc Snétberger’s music school for Roma kids (Snétberger Music Talent Center – Snétberger Zenei Tehetség Központ Alapítvány), which is coming to the end of its inaugural year, with around 60 students getting instructions not just in their instruments but also in subjects such as English and computer skills seen as a key to building a professional career.⁶⁰⁰

Nearly all of the students at the Snétberger Music Talent Center in Felsőörs, on the north side of Lake Balaton, come from underprivileged Roma families. The school chose its students mainly through auditions held around the country; most of the teachers are, like Snétberger, also Roma.

‘In regular music schools, their real talents and values often go unnoticed,’ Snétberger said. ‘That’s why I wanted to have mostly Roma for teachers, because they are aware of this and recognize the students’ skills. (...) My main aim is to build on and develop what they bring from home, to open their musical world to new styles they haven’t yet known.’

Fortunately, civil organizations dealing with Roma are present within the total cross-section of the educational system of Hungary: Romaversitas Foundation (Romaversitas Alapítvány) provides financial support, scholarships, and assistance in learning (consultancy, equipment) for Roma university students and students preparing for university studies. It organizes seminars, operates a library and a facility for renting video tapes, CD-s and it also participates in an international student exchange program. A unique initiative of Semmelweis University and Avicenna International College⁶⁰¹ was set up in 2010, introducing a special program for the education of the young Roma students who are ready and willing to

⁵⁹⁹ See in Part V, Chapter 5. and Part V, subchapter 10.4.2.5.

⁶⁰⁰ <http://www.centredaily.com/2012/04/22/3171393/hungarian-jazz-great-guides-young.html#storylink=cpy> accessed 5 May 2012

⁶⁰¹ Avicenna International College with a long tradition in the provision of medical preparatory courses supported the program by providing the infrastructure and undertook the education during the preparatory phase.

study in one of the fields related to medical sciences.⁶⁰² Well-determined, talented students with a strong and proud identity (10 students) were invited to participate in the program in the very first year.

The program has 3 main characteristics:

- Scientific preparation of the students prior to their admission to the medical university in chemistry, biology, anatomy, ...
- Tutor/mentor support for students after their admission to the medical university. The Roma students enjoy the mentoring support of the volunteer university professors.
- The social/cultural education and support of the students. This is an important part of our education and starts during the preparation and continues in the university. Lectures, visits to museums, theaters, and psychological consultations have been provided by the most prominent experts of the field such as the president of the Hungarian Academy of Sciences, Rector of the Music Art Academy and similar dignitaries.

This program has proven to be a historical and successful model. As in this case, those Roma students receive the medical training and the support of the program that are proud of their identity and will go back to their communities after having completed their education.

In the sphere of culture, the most successful and tenacious experiments are those that operate in a particular locality, are constant and are funded from predictable resources. Such an experiment is the Gypsy Cultural Association in Pecs, which maintains and operates the Rácz Aladár Community House and the Erdős Kamill Roma Museum, too.

10.4.2.3. *The Roma and the Media*

If we want to know what the most important ‘reference groups’ or ‘targets’ of social movements within political opportunity structures are – in general, we can mention the following ones:⁶⁰³

- a) The political-administrative system, including its executive bodies, which appear to be the most important target groups of socio-political movements;
- b) The agents of control, the courts in particular should be taken into account;
- c) Intermediaries in the realm of politics such as parties and interest groups are also key factors in a movement’s environment;
- d) Reactions of the public;
- e) Mass media.

Accordingly, Roma organizations should aim at the interconnection with these spheres and institutions as well. Unfortunately, the reasons enumerated in the first and second sub-

⁶⁰² They won a grant (TÁMOP 2010–2012) within the framework of the Semmelweis University which partially supports this program for two years.

⁶⁰³ Szabó Máté (2009) (n 483) 207–208.

chapters make it almost impossible to do so. Thus, instruments and means letting Roma civil organisations take an active part in public and especially in cultural life are of enormously great importance:

- Since 1990 several Roma newspapers – both conventional and electronic ones – have been published (the majority with state support), such as Phralipe (Brotherhood), Lungo Drom (Long Road), Világunk (Our World), Amaro Drom (Our Road), Kethano Drom (Common Road) and Cigányfűró (Gypsy drill, nickname of the hand-drill) and ROMINFO. Publishers were earlier supported by the Public Foundation for National and Ethnic Minorities in Hungary.
- The Roma Half-Hour minority programme is transmitted on the Hungarian Radio weekly, and Roma Magazine is broadcast on the Hungarian Television once a week.⁶⁰⁴ In addition, the Hungarian Roma community has its own radio channel, named Radio C (FM 88.8).⁶⁰⁵
- There are significant Roma civil organisations, which want to consciously transform the prejudices that exist in the society against the Roma usually as a part of public thinking and of public discourse through the opportunities given by the media. Among them, the most famous is the Romnet-Media Foundation, which is engaged in the organization of events to ensure mutual understanding of the two communities and which publishes news and reports connected to the community.
- One of the most discussed issues of the national scientific research is the image of the Romas displayed in the media, and the modification of this image.⁶⁰⁶
- Translations to Beash have been made e.g. ‘Cigánybáró’ (Baron of the Gypsies) – the novel of the famous Hungarian writer Mór Jókai has been published in the ‘beás’ language for the first time in Hungary. The translation was done by social pedagogue Terézia Kalányos and the 1000 copies of the 160 pages long book were published by Publisher Czupi in Nagykanizsa. Gyula Czupi in an interview stated that ‘the purpose of this publication was far from being profit-oriented, the primary reason was to fulfill a cultural mission, to demonstrate how the Beáš language – the language most commonly used by the Roma of our region – could serve as a vehicle for literature.’⁶⁰⁷

10.4.2.4. *The Roma and sports*

Sports can be a vehicle for a break-out from deprived situations and status. ‘SPIN – Sport for Social Inclusion and Elimination of Racism in Football’ was a conference organised by the Mahatma Gandhi Human Rights Organisation and the Hungarian Football Association, held on February 20th, 2012 at the HFA headquarters. One of the speakers, the leader of the well-known Hungarian Roma Team, considered it important to emphasize the success

⁶⁰⁴ Donceev (n 502) 35.

⁶⁰⁵ <http://www.radioc.hu/>>accessed 4 April 2012

⁶⁰⁶ For details regarding this issue see: Messing Vera (2008): ‘*In a white framework*’ *The representation of Roma in the Hungarian press*.

⁶⁰⁷ Kállai – Törzsök (n 544) 12.

story of the twenty year-old minority team (114 victories out of 116 matches). A plan of a Roma Football Academy has been proposed and discussed several times, but it hasn't been achieved yet.

A specific example is that a sport club founded by foreign individuals in Hungary (the Internationale Club de Football SE in Budapest in 1995) launched its compulsory second team with Roma young people.

Another initiative, the Halker-Kiraly Team Kick-Box Academy's 'Sportintegration' program has been dedicated for disadvantaged (mainly Roma) young people.

We have to reveal that the majority of these sport organisations is a 'grassroots organisation', with a fairly dubious financial background.

10.4.2.5. The Roma and religious activities

There are several religious entities established and maintained by Roma people. The majority of those 'churches' is officially registered as an association e.g. Élővíz Roma Baptista Gyülekezet in Rétközberencs (Living Water Roma Baptist Congregation); Budapesti Roma Gyülekezet (Roma Congregation of Budapest); Hodászi Görög Katolikus Cigány Egyházközség (Greek Catholic Gypsy Congregation in Hodász).

In 2011 the very first Roma order in history was established by well-known Roma musicians, football players and teachers in Mátraverebély. The order was named after Beatyfic Ceferino, who suffered martyrdom in World War II. It aims at strengthening the spiritual life of the Roma.

We have to admit, that there are some Hungarian speaking Roma Congregations abroad, outside of Hungary also, such as New Life Christian Roma Church (Új Élet Keresztény Roma Egyház) in Ukraine, established by Hungarian speaking Roma. Here, we must mention that the communities established by Romas in Hungary previously registered as churches, according to the Act on the right to the freedom of conscience and of religion and according to the Act on churches, religious communities and denominations (Act CCVI of 2011) had to be transformed into associations.

During the last few years several Hungarian Churches have established so called colleges for Roma pupils and students, providing accommodation, financial help, training and other programs, too (e.g. Miskolci Görögkatolikus Cigány Szakkollégium, Wáli István Református Cigány Szakkollégium, Hajdúdorogi Roma Evangélikus Szakkollégium).

10.4.2.6. The Roma and economic (civil) cooperation

Many types of self-help groups have evolved in the last few years in Hungary. One of these, the social cooperative is a relatively new phenomenon and legal form of economic cooperation in Hungary.

Within the context of the socio-ecological transition, the Social Economy model⁶⁰⁸ represents a source of job, activity and creation that should be promoted.⁶⁰⁹

The social cooperative form – although it is fundamentally appropriate for combining social and economic activities – hampers the development of the organization in Hungary according to more than half of the respondents. The main problem is that the legal form is too new so its reputation and recognition is low. This is true for the public, for the business community, and even for public authorities. The lack of information retards and complicates the administration and office routine.⁶¹⁰

In Hungary, some social co-operatives, which are self-motivated and employ Roma people, have also been created preserving Roma values as well. For example Romani Design is a social enterprise that functions as a cooperative. This was one of the first Hungarian social cooperative societies. The Romani Design designs, produces and sells quality clothes and accessories that combine traditional Roma motifs with modern elements. It intends to fight the prejudices against the Roma, and to diminish the resulting social conflicts. The enterprise wants to present to both the Roma and non-Roma culture and to raise awareness of the still living traditions and motifs of this culture through the fashion world.⁶¹¹

10.5. Summary and solutions

10.5.1. Introduction

At the end of this chapter I have to sum up the relevant findings and, in addition, introduce those solutions that are – at least partly – unavoidable and the efficacy of which is feasible. As it has been proven one of the most oppressed ethnic groups in Europe, the Roma (Gypsies) in Hungary face many problems. Centuries of discrimination, the Twentieth Century

⁶⁰⁸ *Characteristics of the social economy in Hungary:*

- Flexible (or fuzzy) definition: a mix of activities in non-profit sector, in civil organisations and in other sectors;
- Limited role in areas such as social inclusion, employment, social services and health care;
- Encouraged civil society development through associations, voluntary organisations, foundations;
- Between state and market;
- National legal framework for the operations;
- Include: associations, foundations, charities, community cooperatives;
- Mainly at the local level.

Leonardo da Vinci Transfer of Innovation – 2010-1-FR1-LEO05-14505. Budapest Business School (BBS) ARIADNE, http://www.bgf.hu/szervezetiagysegek_bgf/rektoratus/FELNOTTKEPZKOZP/PALYAZATIIRODA/dokumentumok/ARIADNE/ARIADNE_Disszemin%C3%A1ci%C3%B3s%20%C3%A9s%20kommunik%C3%A1ci%C3%B3s%20terv_BGF.pdf>accessed 22 January 2012

⁶⁰⁹ Ibid.

⁶¹⁰ Dr. Pethe – Dr. Gyuri – Németh – Feke – Simon: A szociális szövetkezetek működési modelljének kidolgozása a foglalkoztatás elősegítése érdekében. [The elaboration of the model of social co-operation in order to promote employment] Vállalkozásfejlesztési Kutató Intézet Nonprofit Kft. [Research Institute for the Development of Entrepreneurship], Budapest, 2010. 3.

⁶¹¹ Számadó Róza (ed.): Szociális szövetkezetek az alakulástól a fenntartható működésig. [Social cooperatives: from the establishment to the successful operation] OFA, Budapest, 2011. 14.

experience, and, from 1945 to the end of the former regime, party policies and programmes have resulted in the isolation of Roma from mainstream Hungary. Areas that still need to be addressed are the Roma's unfair treatment under the law, ineffective governmental representation, social and economic discrimination, and lack of educational opportunities.

10.5.2. Directions and solutions

- a) Every nation has to have some well-defined political goals that can be communicated as the main targets of the entire community. Since 2010 these official aims – among others – are the development of tourism based on natural resources, especially on geothermal energy and thermal water, and the expansion of the extent of cultivated territory in Hungary. What does this mean from the viewpoint of our topic? On the one hand a standardized and consensual Roma policy must become one of these main goals communicated towards the voters, and on the other hand, social cooperatives and other forms of the developing social economy can both contribute to the transformation of the Hungarian agriculture, and the enhancement of economic strengths of the Roma population.

Moreover, resuscitation of traditional Roma handicraft professions is a real – although restricted – possibility. There are several professions that must be opened up before Roma citizens; e.g. becoming a lawyer, a teacher,⁶¹² a policeman with a Roma background in most of the cases requires positive discrimination (affirmative action).

- b) According to Solymosi's thesis, any intervention into the Roma community's life is effective, if the following interventions are implemented at the same time:⁶¹³
 - ba) Giving fish – Superficial intervention focusing on symptoms, neglecting reasons; e.g. rehabilitation of Roma ghettos
 - bb) Teaching to weave a fishing net – Operative intervention, neglecting why the reasons developed; e.g. Creating jobs, adult education, improvement of housing
 - bc) Fish-pond – Preventive intervention, influencing the development of reasons; e.g. fighting children's poverty.
 - bd) (Awaking) need for eating fish – Foundational intervention, without direct effect, but providing prerequisites and a framework; e.g. developing communities, local health development programs improving health education.

⁶¹² There are very few teachers of Roma origin. According a teachers' survey of 2002 in 898 elementary schools with a high rate of Romani pupils altogether only 45 teachers declared themselves Roma or of Roma origin [from 27730].

⁶¹³ Solymosi József Bonifác: Health Component of the National Roma Integration Strategy, 22–23. [http://www.romadecade.org/files/downloads/Better%20Health%20Conference/Jozsef%20SOLYMOSY%20NRIS%20Health%20component%20Hungary%20pdf\[1\].pdf](http://www.romadecade.org/files/downloads/Better%20Health%20Conference/Jozsef%20SOLYMOSY%20NRIS%20Health%20component%20Hungary%20pdf[1].pdf) > accessed 12 April 2012

- c) In the last few years it has become obvious that projects should last for longer than one year periods. More time is ordinarily needed to establish and operate programs.
- d) Project efforts should be located very close to Roma settlements and markets. Projects need to have – at least partially – independence of state and business sectors to build Roma self-reliance.
- e) According to Nancy Fraser the ‘struggle for recognition’ has been fast becoming the paradigmatic form of political conflict in the late twentieth century. Demands for ‘recognition of difference’ – stated Fraser more than fifteen years ago – fuel struggles of groups mobilised under the banners of nationality, ethnicity, ‘race,’ etc.⁶¹⁴ In these ‘postsocialist’ conflicts, group identity supplants class interest as the chief medium of political mobilisation. Cultural domination supplants exploitation as the fundamental injustice, and in addition, cultural recognition displaces socioeconomic redistribution as the remedy for injustice and the goal of political struggle.⁶¹⁵ Consequently, durable changes require involvement of both the prominent representatives of the majority of the society and the prominent representatives of the given minority. The previous ones can successfully accelerate and back several aspirations and activities, doing it without simulating or replacing self-reliance of the given group or strata which struggles for certain cultural goals.

Fortunately, concerning our topic new tendencies have arisen in the first decade of the twenty-first century: few opulent and well-known Hungarians offered huge amounts for the education and training of talented Roma pupils. One of these was Sándor Demján, who made a pledge of 8 billion forints (approximately 40 million dollars that time) for a 5 year long period in July 2006.

The two foundations linked to Csányi Sándor do similar activities: the Csányi Foundation and the New Europe Foundation provide hundreds of millions of forints (1–2 million dollars / year) in order to support the training, studies and social integration of basically disadvantaged children and young people.

- f) The legal situation surrounding the Roma must be addressed; the underlying facts and circumstances of the legal regulation are to be examined.

The issue of discrimination emerged on the visible national agenda in connection with the debates generated by the process leading to the adoption of a comprehensive anti-discrimination law in late 2003 [ETA – Equal Treatment Act]. The law which is related to Article 13 EC created the Equal Treatment Authority – an organ responsible for combatting all sorts and forms of discrimination – not only in education but in all other areas as well. The Authority started to operate on February 1 2005. Of course, Hungary has ratified almost all major international legal instruments

⁶¹⁴ Nancy Fraser: Az újraelosztástól az elismerésig? Az igazságosság dilemmái a poszt-szocializmus korában. [From redistribution to recognition? Dilemmas of justice in the post-socialist era.] 337. In: Kende Anna – Vajda Róza: Rasszizmus a tudományban. [Racism in the science] Napvilág Kiadó, Budapest, 2008. 321–346.

⁶¹⁵ Ibid.

combatting discrimination, like the UNESCO convention against Discrimination in Education, ILO convention no.111, or the International Convention on the Elimination of All forms of Racial Discrimination. Hungary is also part of the European Convention for the Protection of Human Rights and Fundamental Freedoms and others.⁶¹⁶ Educational law and other sectorial laws used to contain separate and quite inconsistent anti-discrimination provisions,⁶¹⁷ which have been amended to invoke the provisions of the ETA. The ETA distinguishes three types of exceptions [a] general objective justification, [b] special exceptions, [c] positive action.⁶¹⁸

Here, the importance of embracing group-specific rights in the policies for Roma representation must be emphasized.⁶¹⁹

Alternative institutions for securing Roma rights were discussed (e.g. heads of state and government, non-governmental organisations (NGOs), the judicial system, the parliament). The need to reform the Roma self-government system in Hungary in order to provide adequate representational rights for this marginalized ethnic minority was also addressed and several changes have happened already: a Framework Agreement has been signed by the National Roma Self-government (Országos Roma Önkormányzat – ORÖ) and the Government of Hungary. The main reason behind the Framework Agreement was that several problems of the previous programs and strategic objectives became obvious:

They were not linked with a comprehensive monitoring, it was not possible to measure success.

- The use of resources was doubtful in many ways.
- It's not known how many people had been involved in the programs.
- It's not known how many of those sources had been reached by Roma.

The Government and ORÖ – among other measures – jointly undertook to create 100,000 new workplaces for Romas (especially for Roma women), vocational training for 80,000 Roma adults, and the education of 5000 Roma students in higher education. The Government undertook financial support, administrative support, and the enactment of those legal instruments that are needed for the implementation of the goals mentioned above. The National Roma Self Government undertook the 'staff' for the preparation, organization and arrangement of processes by providing Roma coordinators who will be able to communicate and cooperate with the members of the Roma communities in a less bureaucratic way.

The Hungarian EU Presidency (2011) rendered among its priorities the elaboration of an EU Roma strategy. At the same time, the Hungarian Roma strategy – focusing not exclusively on the Roma – was elaborated. It was called the National Social

⁶¹⁶ Pál Tamás (n 552) 11.

⁶¹⁷ E.g.: to decrease segregation, a few years ago even school district borders have been adjusted so that the disadvantaged population in each district does not exceed the average percentage of disadvantaged in the settlement as a whole by more than 15 percent.

⁶¹⁸ Pál Tamás (n 552) 11.

⁶¹⁹ Andrew Burton: *Minority Self-governance: Minority Representation in Flux for the Hungarian Roma*. *Ethnopolitics* (2007) Volume 6, Issue 1, 67–88.

Inclusion Strategy – deep poverty, child poverty, Roma from 2011 to 2020, and – both essentially and formally – the framework agreement between the Prime Minister and the President of the National Roma Self-Government was linked to this strategy.

Regarding the Roma question and the issues of Roma policy – which are perhaps some of the most pressing problems of Hungary – it can be said that in the past thirty years, the enthusiastic initiatives of certain governments (political statements, integration programs) were unfortunately not followed by legislative changes, and concrete actions.⁶²⁰ Furthermore, it is worth noting that ‘the actual and formal equality of the citizens belonging to a national minority cannot be achieved only by legal means, for this it is necessary to change society’s approach and attitudes’.⁶²¹

See also in Part VI, subchapter 2.2.2. on co-decision

g) Programs – both on national and European level – are to be launched:

ga) Currently, most public funds designated to the Roma population are related to the strategic plan of the Decade of the Roma Integration Program.⁶²² The main goals of this program are (as follows):

Accelerate the social integration of Roma and improve their economic situation;

- Reduce the gap between the socioeconomic conditions of the Roma and non-Roma populations in the short term and eliminate the gap in the long term; and strengthen social cohesion.

- gb) Owing to the supporting role taken by the Hungarian EU Presidency, the need to devote attention to the issue of the Roma and the promotion of national efforts in this respect became a highly consensual issue. In response to the communication by the European Commission, the Hungarian Presidency proposed the draft Council conclusions of ‘An EU Framework for National Roma Integration Strategies up to 2020’ which were adopted by the Employment, Social Policy, Health and Consumer Affairs Council on 19 May. The conclusions stress the Member States’ primary competence concerning the inclusion of marginalized and disadvantaged communities, such as Roma; in order to improve the situation of the Roma, Member States developed inclusion strategies or integrated sets of policy measures within their broader social inclusion policies by the end of 2011. The document calls on the Member States to make efforts for the effective use of EU funds and to consider taking into account the goal of the inclusion of the Roma increasingly when designing, implementing and monitoring their National Reform Programmes. By the spring of 2012, the Commission assessed the national strategies and reported back to the European Parliament and the Council.⁶²³

⁶²⁰ Majtényi Balázs – Majtényi György: Üveggyöngyhatás. Változatlan romapolitika. [Glass Effect. Roma policy unchanged.] *Fundamentum* 2012/1. 67.

⁶²¹ Ibid.

⁶²² Government measures were funded from the budget and the resources of the New Hungary Development Plan until 2010.

⁶²³ *The most important achievements of the Hungarian presidency.* pp. 11–12. <http://www.mfa.gov.hu/NR/rdonlyres/AFA97CC8-53C6-4C2C-A1F5D7A527CFF/0/eredmenyekvEN.pdf>>accessed 24 April 2013

gc) Roma NGOs need support in building international relationships as well. Currently, with few exceptions like OSI's cultural network programs, Roma lack connections with groups in other countries. Coordinators are needed to establish relations between the Roma and non-Roma organizations operating in different countries and to organize joint projects.⁶²⁴

h) The socialization experiences of the relevant actors (of both sides) were still gained in the old authoritarian-bureaucratic system⁶²⁵ built on several prejudices and fears. That's why the culture of protest, as a functional segment of political culture is still rudimentary in Hungary, and there are several problems which should be solved by processes of political learning.⁶²⁶

The majority of Hungarian society tends to show racist tendencies in many ways; the most notable of which was the appearance of paramilitary groups and organizations, such as the Hungarian Guard (Magyar Gárda). Several enactments and legal decisions have been made against the frightening presence of those entities, but further measures of precaution are to be taken.

'The ethnicity- and race-based opinions expressed at the demonstrations and events organized by the Hungarian Guard against »gypsy crime«, in fact breached the basic principle of the right to human dignity. The Hungarian Guard has [...] turned discrimination into an agenda. In order to express this, the Hungarian Guard has held intimidating demonstrations on several occasions.' – the Supreme Court expressed in its verdict approving the dissolution of the Guard. In 2011, as one of the successors of the banned Hungarian Guard, the New Hungarian Guard hate group continues to organize such demonstrations.⁶²⁷ Moreover, social sciences draw attention to the confirmed fact that disadvantaged groups tend to generate multitudinous and violent actions after reaching a 'critical mass'.⁶²⁸

First, police training lies at the heart of preventing more racially-motivated violence. If racist violence is committed, police must benefit from good training to collect evidence so that the prosecution can correctly define the nature of the crime committed. Indeed, if the investigation at the crime scene is incomplete and racial motives are not uncovered, the justice system cannot ensure full accountability.⁶²⁹ But are local police adequately trained to cope with lower-level, day-to-day incidents

⁶²⁴ *Empowering Roma Youth...* (n 501) 34.

⁶²⁵ Szabó Máté (2009) (n 483) 262.

⁶²⁶ Ibid.

⁶²⁷ <http://www.athenainstitute.eu/en/map/olvas/42>>accessed 11 April 2012

⁶²⁸ Rixer Ádám: Egy új társadalmi szerződés körvonalai a roma kérdés ürügyén. [The outlines of a new social contract on the pretext of the Roma issue] *De iurisprudencia et iure publico* (DIEIP) 2009/3. 11. (www.dieip.hu)

⁶²⁹ Joelle Fiss: Roma Citizens Remain At Risk In Hungary, Reforms Needed. The Huffington Post, February 23, 2010. <http://www.szema.hu/index.php/english/148-roma-citizens-remain-at-risk-in-hungary-reforms-needed> (2012. 02. 25.)

of harassment and violence that may not hit the headlines as hard? Police need to adapt conflict resolution mechanisms to their local contexts.⁶³⁰

Secondly, Hungarian law enforcement authorities should consider making concerted efforts to include more Hungarians of Roma origin into police units in order to break down the cognitive sentiment of ‘us against them’ that feeds into social tensions.⁶³¹

We have to transform the deeply entrenched anti-Roma stereotypes that are harboured at many levels within Hungarian society – in private circles, in the political arena and in the media.⁶³² ‘We must try to understand what is happening, under what circumstances, who the main actors are, what their aims and motivations are, but we should be very cautious about judging the process and the results. Application of theories, comparison with developments in other parts of the world or in other periods of history will only be fertile if we are extremely careful with generalization and value judgments.’⁶³³

‘Gypsy crime’, ‘Gypsy criminality’ is a problematic notion the usage of which has been infiltrated into the public discourse as a mainstream concept. To handle the usage of these expressions (and of many others, similar to these) in public speech is one of the most enormous challenges in Hungary today: to enhance real society’s knowledge on the distinction between ‘Gypsy crime’ or ‘Gypsy criminality’ (‘cigánybűnözés’) that are racist expressions, criminalizing all the Roma living in Hungary and Gypsy criminality habits (‘cigány bűnelkövetési szokások’⁶³⁴) that could be measured even statistically. The latter shows the typical features of the criminality within a specific stratum of Hungarian society without criminalizing all the members of that group in general. Even these differences are to be taught nowadays.

Unfortunately, there has been no consensus on the usage and meaning of these notions even among the representatives of Hungarian criminal sciences for many years; many have chosen the way of totally neglecting that problem, avoiding even mentioning of these words (gypsy, roma) at all.⁶³⁵

- i) Specifically, if we ask why Roma are under-represented in the national assemblies of central and Eastern European states, one of the realistic answers is the absence of a clearly defined conception of Roma nationalism at the national and transnational level.⁶³⁶ This ambiguous nationalism stands in contrast with invocations of

⁶³⁰ Ibid.

⁶³¹ Ibid.

⁶³² Ibid.

⁶³³ Kuti (1998) (n 25)

⁶³⁴ Póczik Szilveszter: Roma bűnelkövetők kriminológiai vizsgálata – 2002. <http://www.szochalo.hu/hireink/article/101090/3218/page/1/>>accessed 22 February 2012

⁶³⁵ See as an example: Szabó Győző: A közrend és közbiztonság aktuális kérdései. [The current issues of public policing and public security.] In: A közbiztonság és közrend aktuális kérdései. [The current issues of public policing and public security] Magyar Kriminológiai Társaság, Budapest, 1991. 6–19.

⁶³⁶ Aidan McGarry: Ambiguous nationalism? Explaining the parliamentary under-representation of the Roma in Hungary and Romania. *Romani Studies* (2009) Vol. 19, Issue 2, 22.

nationalism by other minorities in the region, notably the Turkish minority in Bulgaria and the Hungarian minority in Romania, whose electoral support is contiguous to their respective demographic weights. Both of these minorities link nationalism to specific cultural interests whereas the interests of Roma tend to relate to socio-economic and political factors. Whilst many factors conspire to impede the appropriate political representation of Roma across central and Eastern Europe, this article seeks to shed light on the oft-neglected impact of Roma nationalism.⁶³⁷

As a matter of fact, initiatives intended to create a Romani nation or, as it is sometimes described, ‘creating a conceptually and institutionally separate political entity’, only resemble programmes for social integration and equality of opportunity because, in articulating their target group, they ethnicise all social and political issues. Ultimately, such initiatives are anachronistic, violent and futile.⁶³⁸

- j) Together with Act CXXX of 2011 on Legislation another law on public reconciliation of norms with society (Act CXXXI of 2011) entered into force in Hungary on 1 January 2011 to enable the participation of individuals, from natural persons to so called strategic partners, in legislation.

In dialogue between governmental bodies and different civil entities in Hungary, more effective guarantees need to be forced because of the fact that all the existing legal regulations on obligatory involvement of civil actors are so called *lex imperfectas*. It means that the possibility of participation of NGOs in different areas of public life (for example the legislative process) exists as a mere consequence of momentary political etiquette. There are some newly created institutions [e.g. National Cooperation Fund (*Nemzeti Együttműködési Alap*)].

- k) Today’s education policy in Hungary identifies integration as a political, social and pedagogical aim,⁶³⁹ even though it was not a story of success in the last decade.^{640 641} It pays special attention to financing special needs education. There have been many attempts to invent integrated education adapted for the Hungarian – and also for the Hungarian Roma – situation. E.g. the National Educational Integration Network (OOIH) launched a program in 2003 that focused on the integrated education of primary school children (grades 1 through 8) in 45 schools in Hungary. The goal of the program was to compensate for the educational disadvantages of children

⁶³⁷ Ibid.

⁶³⁸ Aladár Horváth: Gadjo Nation – Roma Nation? <http://www.errc.org/cikk.php?cikk=2655>>accessed 11 May 2012

⁶³⁹ Kőpatakiné Mészáros Mária: Special Needs Education in Hungary – Supportive Education Policy. OFI, Budapest, 2009. <http://www.ofi.hu/tudastar/iii-resz-country-report/special-needs-education>>accessed 4 April 2012

⁶⁴⁰ Kertesi Gábor – Kézdi Gábor: Cigányok és iskola. [Romas and school] Educatio Kiadó, Budapest, 1996.

⁶⁴¹ Andl Helga: Egyszervolt iskola. Esettanulmány egy iskola megszűnéséről. [Once upon a time there was a school: case study regarding the cessation of a school] Új Pedagógiai Szemle 2008/11–12. 153.

from poor and/or minority families by providing quality education in an integrated environment.⁶⁴²

However, the real task is still the creation of consent between the interests of different communities, education policy, legislative regulation and possibilities of institutions. That kind of harmonizing requires a comprehensive (wide range) social and professional conciliation which was the missing element in the past in Hungary.

1) Financial issues of Roma organisations

One of the main objectives is to fulfill the communication gap between Roma citizens and the Hungarian state with civil institutions. In many cases their operation is limited in financial resources.⁶⁴³

Central budgetary support in the form of invitations to tender is available for the further professional training and preparation for public activities of representatives of the local Roma minority self-governments, as well as members of Roma social organizations. The aim of programmes based on the particular demands of the locality is to strengthen cooperation between Roma minority self-governments and organizations and the self-governments and public administrative organizations of settlements, and to reinforce dialogue between the different strata in public life.⁶⁴⁴

Beyond the financial support of public foundations in the past and Wekerle Sándor Fund Management in the future, National Civil Fund and its successor, National Fund of Cooperation is to be mentioned, as an entity (re)distributing a huge amount towards (Roma) civil society.

Concerning private funds revenues originating from 1 percent of the personal income tax designation must be mentioned. The amount collected usually covers only related advertising and other administration expenses.

Among many other grants the Roma Inclusion Grant⁶⁴⁵ – founded by George Soros – had supported nonprofit legal entities (non-governmental and public organizations, libraries, museums, cultural centers, associations, communities, registered charities, etc.) that work in the field of arts and culture and have the

⁶⁴² Kézdi Gábor – Surányi Éva: Sampling and Methodology in the Evaluation of the National Education Integration Program, and the Conclusions of the Evaluation. *Mintavétel és elemzési módszerek az oktatási integrációs program hatásvizsgálatában, és a hatásvizsgálatból levonható következtetések. Budapest Working Papers On The Labour Market / Budapest Munkagazdaságtani Füzetek BWP* – 2010/2. Magyar Tudományos Akadémia Közgazdaságtudományi Intézet, Budapest, 2010. 4.

⁶⁴³ Lucía Sedlakova – Tatiana Tokolyova: Development of the Civil Society of the Visegrad Region. In: István Tarrósy (ed.): *Social, Economic and Political Cohesion in the Danube Region in Light of EU Enlargement*. CEP, Bratislava, 2007. 37.

⁶⁴⁴ Doncsev (n 502) 38.

⁶⁴⁵ <http://www.soros.org/initiatives/arts/focus/roma/grants>>accessed 20 November 2013

status of beneficiary, carrying out projects that address one or more of the priorities of the program.⁶⁴⁶

The majority of companies do not donate to social programmes, either because they do not have the funds or because the company does not have a culture of giving. Even among large companies, only very few have developed a corporate philosophy of social responsibility or a strategic plan for philanthropy. No detailed statistics on corporate donations are available because companies generally treat this information as confidential; we do know that approximately 80 percent of the donations are financial. In-kind service or volunteer work done by corporate personnel make up a smaller percentage.⁶⁴⁷

In conclusion, beyond financial ‘aid’ sponsors / supporters /committed entities should support Roma NGOs with training to make their organizations viable and effective.

- m) The state’s youth system did not have a single organization that would have dealt specifically with Roma issues for many years, and no independent organizational unit existed within the Roma segment that would have dealt with young people principally. Representatives of Roma affairs earlier appeared in several ministries,⁶⁴⁸ but since 2010 the majority of Roma affairs belong to the Ministry of National Resources⁶⁴⁹ (State Secretariat for Social, Family and Youth Affairs, State Secretariat for Education, State Secretariat for Culture, etc.) and continuation of this centralization is suggested.

We must strengthen cooperation between Roma and non-Roma youth organizations with joint grants and intercultural programs. We know of only a few programs (for instance, those run by Artemission Foundation) that specifically deal with intercultural initiatives targeting Hungarian young people, and information about them is limited.

The establishment of scholarships for youth assistants who primarily or exclusively work with Roma young people. Launching such a scholarship program would greatly facilitate OSI’s professional positioning, since no such initiatives exist.⁶⁵⁰

⁶⁴⁶ Priorities were:

Capacity building: Strengthening the capacity of individuals and organizations to implement and sustain good practices and effective ways of working.

- Collaboration: Building alliances and networks with other projects and organizations to encourage knowledge sharing within the country of operation and beyond.
- Diversity: Promoting greater equality and access to cultural goods and activities for the most marginalized beneficiaries.
- Public Engagement with Critical Social Issues: Using the power of arts and culture to promote discussion, debate, and critical reflection on social issues important to target communities and beneficiaries.

⁶⁴⁷ *Empowering Roma Youth* (n 501) 27.

⁶⁴⁸ Ibid. 10.

⁶⁴⁹ Today: Ministry of Human Resources [Emberi Erőforrások Minisztériuma (EMMI)].

⁶⁵⁰ *Empowering Roma Youth* (n 501) 33.

- n) The importance of the role of churches, religious associations and other religious groups without a certain legal form cannot be overestimated. As it has already been pointed out that several entities providing a spiritual renewal for Roma have been launched in the last decades and, in addition, almost all the major Christian churches have begun their own Roma-mission – called Roma-pastoration – in Hungary. These processes should be supported by the authorities as well, by pronouncing that Roma-pastoration is a public duty that must be backed by state organs even financially in Hungary (even though it's obvious that the proper monitoring of the use of those amounts can not be done).

11. The most frequent topics of the civil sector in 2014 and in the future

Today, – just as it has been previously mentioned – in a globalized world, in the European democracies and in other countries and regimes as well, the features of centralizing politics appear with no tolerance and permanently averting disaster both in the domain of liberties – such as freedom of association and freedom of opinion – and in that of economic and social rights, labor rights, access to welfare services, right to housing, third generation rights, freedom of information, data protection, or the right to a healthy and sustainable environment. These debates expressed a wide variety of important challenges in relation to the situation of different social groups, especially of vulnerable groups affected by the crisis of democracies that are not any more the brilliant opposites of the authoritarian systems as they were in 1989.⁶⁵¹ Moreover, some characteristics of authoritarian systems appear as a possible starting point for successful public policy making – even in relation with the sector, too.⁶⁵²

Of course, not all the civil actions are direct responses to state actions (plans, public policy programs, laws), but a strong correlation may be observed in Hungary between the areas considered to be relevant by the respective government and the intensity of the civil activities related to these.

It seems essential to catalogue those items and areas, which are the most ‘populated’ by today’s active civil society in Hungary.

It should be emphasized that there are cross-government ‘chronic problems’,⁶⁵³ which are actually present in public discourse themed by civilians after the change of the regime.

⁶⁵¹ Szabó M. (2012) (n 363) 65–66.

⁶⁵² Orbán Viktor: A munkaalapú állam korszaka következik. [The era of the state based on labor will follow] Orbán Viktor beszéde a XXV. Bálványosi Nyári Szabadegyetem és Diáktáborban 2014. július 26. [The speech of Viktor Orbán at XXV. Bálványosi Nyári Szabadegyetem és Diáktábor, in 26. July 2014] Tusnádfürdő (Báile Tuşnad). <http://www.kormany.hu/hu/a-miniszterelnok/beszedek-publikaciok-interjuk/a-munkaalapu-allam-korszaka-kovetkezik>>accessed 1 September 2014

⁶⁵³ Nizák Péter: ‘A nagykorú magyar civil társadalom.’ *Politikatudományi Szemle* (2010) Vol. 19, No. 2, 129–136.

Such problems are the party financing issues and the freedom of press.⁶⁵⁴ The issue of financing of the civil sector can also be classified as such a problem, which became even more relevant due to the Norwegian NGO Fund case.⁶⁵⁵ This suggests that in Hungary the political commitments and activities – both the international and the domestic ones – remain an important topic.

While dealing with the topics considered important by the civil sector, we should be mapping those domains the significance of which is constantly increasing, and which will have an important place in the near or distant future due to their gravity and relevance.

If we should determine what the core characteristic of ‘civil society’ is, we could say that it is the ability to reflect on real social problems. It is a pre-question in the examination of both the state and civil society that at what degree the state and society will provide answers for the urging questions of the coming years and decades. Regarding Hungary, such questions are demography problems,⁶⁵⁶ the Roma issue⁶⁵⁷ and the possible effects of climate change.⁶⁵⁸

It is undoubtable that in Hungary the Roma issue is one of the most urgent, yet in practice least handled problems. The latter utterance is true also because in public spheres – including the state/public administration sectors of the public – it is still not well-settled which are the legitimate and constructive forms, frameworks and wordings of raising the issue.

From the aspect of our topic it is another important context that the change of paradigms mentioned so often in relation with Roma policy will not mean simply the numeric strengthening of the institutions of representative democracy today: in order to allow the Roma minority to become active, initiative part of the legal community in Hungary, it is obvious that the democracy concept of legal-procedural stability must be overstepped, broadening its scope and content with value-based aspects.

The protection of the interests of future generations – thus of the newer generation of Hungarian Roma people with growing significance and, based upon the demographic trend, with growing numbers – would require us to ‘restrict the emergence of the will of the empiric majority by referring to them as to a yet non-existing population, eventually leading us to a principle which is contrary to the opinion of the current majority – expressed at political elections or through the market game of supply and demand’.⁶⁵⁹ However, in order to operate them smoothly, the traditional principles of democratic representation and

⁶⁵⁴ For further detail see the websites of Transparency International (TI) and Társaság a Szabadságjogokért (TASZ).

⁶⁵⁵ On the basis of complaint, the prosecutor’s office began to investigate, in the summer of 2014, the practice of the Hungarian Environmental Partnership Foundation co-ordinated by the Norwegian NGO Fund (NNGOF) for embezzlement, while the program’s implementation and control – as it is clearly stated in the agreement signed with the Hungarian government – is the responsibility of the supporting countries (Norway, Iceland and Liechtenstein). [investigating the Norwegian Fund for Embezzlement. MTI 2014. aug. 07. 15:43 <http://nepszava.hu/cikk/1029673-sikkasztas-miatt-nyomoznak-a-norveg-alapok-ugyeben/>].

⁶⁵⁶ In Hungary, this is reflected in the accelerated aging of the population.

⁶⁵⁷ See also: Rixer Ádám: A roma érdekek megjelenítése a jogalkotásban. [Incorporation of Roma interests into legislation] Patrocinium, Budapest, 2013.

⁶⁵⁸ See e.g. <<http://www.inhungary.com/budapest/desert-in-hungary.html>>accessed 5 September 2013

⁶⁵⁹ Lányi (n 15) 118.

decision-making should be supplemented,⁶⁶⁰ these new institutionalised changes are/will be necessary. The constitutional ground of this concept may be that the new Fundamental Law stands in front of us as an 'upward open' constitution. This upward openness means that during the validity of the new Fundamental Law one of the state's (and its organisations') main tasks is to proceed during the enactment of any normative or individual regulation or during the interpretation of Hungary's Fundamental Law by keeping in mind the interests of future generations.⁶⁶¹

Turning to the environmental issues: within a few decades a serious rise in average temperatures, erratic rainfall distribution, and long-term water shortages will occur in some areas of Hungary [the regional climate model downscaled at the Hungarian Meteorological Service (OMSZ) predicts more than 3 °C mean temperature increase in every season in Hungary in the last third of the 21st century (<http://met.hu>). For example in 2003 FAO already classified the territory between the two major rivers (Danube and Tisza) as 'semi-desert' and called for action to prevent further desiccation.⁶⁶²

These issues will bring an even greater challenge for the civil/non-profit organisations. The solution is relatively well-defined: water retention and soil moisture storage management are needed.⁶⁶³ However, these seemingly simple steps will have extreme social, economic and natural impacts and implications. To address these issues, to raise awareness and to formulate proposals it is necessary for domestic civil society to take part actively and to take responsibility as well.

A number of Hungarian non-governmental organizations already fight against climate change, and for the implementation of a greener climate policy. WWF⁶⁶⁴ has several programs to raise public awareness to climate-related problems, and it participates in the debates on climate policy. The Clean Air Action Group⁶⁶⁵ makes climate-friendly proposals to the decision makers related to the fields of energy management, transport, taxation and urban design. The Energy Club that previously operated as a civil organisation involved in different campaigns, and currently working as a professional organization deals with energy efficiency, energy conservation and the promoting of renewable energy. Greenpeace Hungary presented, with the title Energy Revolution in November 2011, the possibilities of our country to replace fossil and nuclear energy.⁶⁶⁶

The National Society of Conservationists (NSC) was one of the most active organizations in the last years in Hungary in the domain of climate policy. The campaign for the

⁶⁶⁰ Ibid.

⁶⁶¹ See e.g. Article P) of the Fundamental Law of Hungary:

'All natural resources, especially agricultural land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets shall form part of the nation's common heritage, and the State and every person shall be obliged to protect, sustain and preserve them for future generations.'

⁶⁶² <http://www.inhungary.com/budapest/desert-in-hungary.html>>accessed 23 April 2013

⁶⁶³ Effects, consequences of the climate change and options for adaptation to the changes. Ministry of Rural Development, Budapest, 2010. 32.

⁶⁶⁴ <http://wwf.hu/klimavaltozas>>accessed 19 May 2013

⁶⁶⁵ http://levego.hu/tevekenysegek/eghajlatvedelem_energia>accessed 6 September 2013

⁶⁶⁶ Climate Policy in Hungary. Polycysolutions, Budapest, 2011. November, 35–36.

motion regarding the Act on Climate was started in autumn 2008.⁶⁶⁷ This was signed by more than 15.000 citizens and supported by more than 500 civil organisations. The aim of the rejected Climate Act (year of rejection 2010), was to reduce the use of available fossil energy resources, through the introduction of a socially fair resource quota.

To the above it should also be added that in the recent past natural disasters have created / create the possibility for 'spectacular' actions of the Hungarian civil society. On 4 October 2010 Hungary's largest ever industrial and environmental disaster occurred, when one of the reservoir walls at the privately-owned MAL Hungarian Aluminium plant ruptured, and 1.8 million m³ of strongly alkaline liquid red sludge flooded out to cover nearby settlements. Thanks to an unprecedented level of solidarity, a huge number of donations arrived from people in Hungary and abroad; so in order to coordinate relief activities, the Civil Humanitarian Coordination Centre [*Civil Humanitárius Koordinációs Központ*] was formed, with the cooperation of the National Directorate General for Disaster Management, the Ministry of National Resources, the Hungarian Red Cross, the Hungarian Maltese Charity Service, Hungarian Interchurch Aid, Caritas Hungarica and Hungarian Baptist Aid.⁶⁶⁸

⁶⁶⁷ <http://www.klimatorveny.hu/>>accessed 11 August 2013

⁶⁶⁸ <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/one-year-on-hungary-remembers-the-red-sludge-disastery>>accessed 17 October 2011

Part VI

THE RELATIONSHIP BETWEEN CIVIL ORGANISATIONS AND PUBLIC ADMINISTRATION IN HUNGARY, WITH SPECIAL REGARD TO THEIR PARTICIPATION IN LEGISLATION

1. Introduction

Social and economic (crisis) procedures occurring in certain countries, as well as the negative effects⁶⁶⁹ resulting from the structure of the EU, gradually directed public attention to the importance of cooperation with civil⁶⁷⁰ organisations and its growing significance, not only at the level of member states or the EU⁶⁷¹, but also globally.⁶⁷² It is important that the established and substantially independent civil/non-profit sector is not only affected by certain administrative rationalities from the direction of the market and state, even in post-socialist countries, but it gains – through the independent norm type of philanthropy – ‘administrative power’, which is substantially able to influence the behaviours of individuals and their organisations intensively (even in a society organised by the state).⁶⁷³ Civil

⁶⁶⁹ Several significant problems may be mentioned: democratic deficit; lack of legitimacy; management deficit, in so far as the human resources of EU institutions are limited; communication problem, as information is not transmitted to EU citizens properly; the growing problem of ensuring welfare services.

⁶⁷⁰ In this work – for better understanding and in lack of references for exceptions – civil organisation is interpreted as a type of organisations set forth in law [Article 6 Paragraph (6) of Act CLXXV of 2011 on Right of Association, Non-profit Status, and the Operation and Funding of Civil Organisations], that is – except for parties – associations, foundations and civil societies registered in Hungary – therewith that the expressions non-profit (civil, non-profit organisation) and civil society refer to a broader organisational and personal scope.

⁶⁷¹ Reisinger (n 207) 40–51.

⁶⁷² In relation to the context of globalisation and civil society *see* Miszlivetz Ferenc: A demokrácia és a civil társadalom átalakulása a globális térben. [Transformation of democracy and civil society in global space] *Civil Szemle* (2012) 9(1) 62.

⁶⁷³ Billie Sandberg: Constructing Society’s Aide. *Administration and Society* (2012) 44(8) 955.

society is the sector the establishment of which is inseparable from state and market, while it affects both.⁶⁷⁴

The popularity of the presently emerging ideas of 'good governance', as well as their increased legitimacy is 'not only due to governmental effectiveness, but also to the closely related participatory governance'.⁶⁷⁵ In this case constitutional and public law contribute to the legitimacy of the government, thus '[governing] upon indirect representation is supplemented with the participative democracy of multi-level governing, with the more direct involvement of citizens and their communities, local-governments in governing. Therefore, neo-corporativism and, moreover, good governance are 'good' only if in parallel with the reduction of parliamentary control of everyday governing the substantial democratic effectiveness of the government increases, enforcing the criteria of legality, professionalism and the more fluid realisation of social needs'.⁶⁷⁶

Plural, participative democracy provides the participation of society and economic players, and thus civil/non-profit organisations, satisfying common social needs – beyond periodic elections and referenda – within the framework of the right to make recommendations, to be informed and to object, in several ways within task provision possibilities.⁶⁷⁷ In relation to civil/non-profit organisations, such fields and tools related to one another, or viewed independently, may be the following ones:

the shaping of local and national public issues, debating actual issues;

- participation in the creation of laws;
- participation in local governmental work;
- the planning and realisation of settlement, territorial and national development programmes; cooperation in the management of investments and projects;
- the performance of public tasks and the provision of (public) services;
- the building and shaping of communities;
- acting as a communication channel (the bridge-role), acting in an advocate role; presentation of interests, articulation of opinions, participation in consultative mechanisms and protection of rights.

It is possible to characterise these involvements from several aspects, based on e.g. the type of the organisation, features of the performed task, the degree of involvement (individual, partial, external support, etc.), and the existence of a degree of possible public power rights. At this point we wish to refer to an important approach, that of direct and indirect

⁶⁷⁴ Helmut K. Anheier – Regina A. List: Dictionary of Civil Society, Philanthropy and the Non-profit Sector. Routledge, 2005. 54.

⁶⁷⁵ Frivaldszky János: A jó kormányzás és a helyes közpolitika formálásának aktuális összefüggéseiről. [On the present context of good governance and shaping proper public politics] In: Szigeti Szabolcs (ed.): *A jó kormányzásról: Elmélet és kihívások* [On good governance. Theory and challenges.] JTMR Faludi Ferenc Akadémia – Jezsuita Európa Iroda – OCIPÉ Magyarország – L'Harmattan Kiadó, Budapest, 2012. 61.

⁶⁷⁶ Ibid.

⁶⁷⁷ Reisinger (n 207) 48. See also Rixer Ádám: A kormányzat és a civil társadalom kapcsolatának jogi aspektusai Magyarországon. [Legal aspects of the relationship of government and civil society in Hungary] (Dphil thesis, KRE ÁJK DI, Budapest, 2006.

participation in public issues, related to which it is important that indirectness does/may not only mean that the civil organisation influences the given issue through other organisations or bodies, but also that its relationship to the issue does not create any substantial direct effect or legally interpretable, observable responsibility.

Therefore, the primary direct institutions and tools of civil participation in broadly interpreted public matters (affairs), or in the performance of narrowly viewed public administrative tasks are those through which civil society – in its relationship with certain institutions of the state or local government – appears directly as a substantial player [as client; representative; mediator; named member of a decision making forum (body) responsible for the final decision; service provider; possessor of authority powers, etc.]. In the case of indirect institutions and tools civil organisations merely participate in the flow of information, make recommendations, provide opinions (within the framework of *ad hoc* or institutionalised proposer, opinion maker or coordinative forums), without taking direct or indirect responsibility for the consequences of the decision made – at least formally – separately from its cooperation. The *differentia specifica*, therefore, is the feature and degree of cooperation related to individual or normative decision making and the same of the responsibility for the cooperation.

State regulation appears in the case of both systems of institutions and tools, but while in the case of indirect tools the obligations of state (administrative) bodies and the rights of civil organisations and their guarantees are dominant in the relationship, in the case of direct tools the numbers of rights and obligations are ‘more balanced’ on each side.

According to some approaches,⁶⁷⁸ legal regulation regarding the civil/non-profit sector (in the examined context) *may be built in three main directions*; first of all, regarding the separate existence of the players of the non-profit sector, it may include norms ‘enabling for cooperation’ (possible organisational forms, operational, financial management rules, etc.); second of all, regarding the relationship of the civil non-profit sector and the state (more precisely public administration); finally, it may have a regulatory effect in relation to the civil non-profit sector and the private sector, thus the economic sphere and individuals. The division of the first two fields is (also) very much theoretical, because with the regulations carrying specific civil (non-profit) contents the state actor bearing legislative rights sets the boundaries of the two sectors and describes the features of their relationship: e.g. laws about public benefit organisations or voluntary services – despite the fact that their features facilitate the establishment and creation of a separate sector – form a sophisticated and complex system while managing the realisation of public goals not by state actors, but supported and controlled (supervised) by the state.

As described in the previous parts, the relationship of the civil/non-profit sector and public administration may be examined from several specific aspects, but in our opinion these fields may be put into three – relatively – well distinguishable groups. Therefore, the relationship of administrative bodies with civil organisations may be identified in

- a) the creation of administrative programs and legislation;
- b) the provision of public services, and
- c) the (individual) protection of rights.

⁶⁷⁸ *Civil Jövőkép – Átfogó nonprofit jogi reform koncepció*. [Comprehensive legal reform non-profit concept] Civil Társ Trust Programiroda, Budapest, 2004. 5.

From among these three aspects this chapter undertakes to describe in details the aspect of civil participation in program making and legislation, in a way that elaborates the issue from the perspective of state administration.

2. Civil participation in program making and legislation

2.1. General questions of civil participation in program making and legislation

Among general pre-questions we shall refer to the fact that the narrowly viewed parliamentary section of legislation (which is not the subject of this work) and the section in which the contribution of state administration bodies is realised differ from each other, and the social organisations' participatory rights and competences are also different in the two phases.⁶⁷⁹ Furthermore, there are significant differences between contribution to the decree making of state administrative bodies and that of local governments.

We shall consider the opportunities available for narrowly interpreted civil organisations, and we will scarcely touch upon those tools available as opportunities only to certain citizens. It is important that among the forms of participation there are many which are available not only to those organisations which were established or registered in Hungary.⁶⁸⁰

The possible ways of participation may be categorised from several aspects:

- Social participation in legislation has legally detailed (institutionalised) forms appearing on the side of the legislator as obligation (negotiations, forums, consultations and related basic feedback), as well as forms about which only general rules of the legal system may provide a starting point regarding their possible content or limits (organisation of demonstrations, requesting expert opinion, establishing an online debate forum, etc.), without having any legal minimum regulation about the 'observation' and utilisation of such information transmitted to the decision-maker this way, and therefore these have been primarily regulated as possibilities of the potential users of these forms (these forms are not in the focus of this work).
- Among institutions establishing some kind of obligation on the side of the legislator, there are extremely diverse tools considering their 'features and scope', which show great diversity also regarding the degree and directness of the role they play in establishing the content of the final (normative) decision, or regarding the targeted level of decision making/legislation (local, national or European). It is worth noting that this work concentrates primarily on the institutions of civil cooperation operating at the national level which can be properly understood through the state administration/local government division.

⁶⁷⁹ Vadál Ildikó: A kormányzati döntések konzultációs mechanizmusai. [Consultation mechanisms of governmental decisions] COMPLEX Kiadó, Budapest, 2011. 163.

⁶⁸⁰ cf Article XXIII Paragraph (7) and Article XXIII Paragraphs (2) and (3) of Fundamental Law of Hungary.

The literature offers another approach, as well, categorising tools and techniques of social participation into two big groups, distinguishing between traditional techniques and modern techniques. Among the latter ones, for example, the use of surveys may be mentioned.⁶⁸¹

One of the most obvious groupings of available tools (institutional possibilities) is – as mentioned above – the traditional division of direct and indirect tools: in this regard the notion of directness means, on the one hand, the institutions (typically bodies) in which the representatives of civil society may express themselves directly and may be able to make some decisions, while, on the other hand, directness may be used also in the sense that the civil organisation directly approaches the legislative body (thus in our narrow interpretation, the competent central state administrative body or the body of representatives) with its suggestion or opinion. In the latter approach the indirect feature also means the influencing of the public administrative legislative body through another (legislative) body or person.

The titles of the chapter and the sub-chapter intentionally do not focus only on the main characteristics and rules of participation in the narrowly interpreted legislation, but also wish to mention at least those practices (institutions) through which civil/non-profit organisations may perform activities – which may not be transformed into legal instruments, but fit into the frameworks of law – influencing the life of the closer/broader community and participate in the creation of documents (strategies, concepts, declarations, calls, etc.). Therefore, when for the sake of understanding legislation is mentioned, it will be interpreted – in a broader sense – by taking into account the abovementioned.

One of the most important pre-questions is how far civil society may go in participation in (political) decision making. According to the general (majority) opinion, its presence is reasonable and desired only in the preparation phase of decision making that manifests both informal and institutionalised forms.⁶⁸²

Within the analysis of regulations related to legislation, it may be observed that the regulation – especially with regard to the issue before us – is still very much diverse.⁶⁸³ Before 1 January 2011, there was no comprehensive act which could have attempted to provide unified regulation for the possibilities and procedures of the enforcement of social interests in governmental decision-making mechanisms.⁶⁸⁴ A unified set of regulations about social participation is still missing; even though Act CXXXI of 2010 on social participation in the preparation of laws [implies] in its title that we are facing a unified regulation, but this is not the case. In addition to this, sets of acts and government decrees contain relevant regulations regarding this issue.⁶⁸⁵ Judit Tóth noted earlier that ‘The scope of tools related to the operation of the Government and the Office of the Prime Minister□ is rather diverse. Their common characteristic is that they rarely form a unified system, and rather try to find sup-

⁶⁸¹ Reisinger (n 207) 113.

⁶⁸² Sebestyén István: *Civil dilemmák, civil kételyek a civil szervezetek (köz)életében*. [Civil dilemmas, civil doubts in the (public) life of civil organisations] *Civil Szemle* (2004) 1(1) 36.

⁶⁸³ Vadál (n 679) 170.

⁶⁸⁴ *Ibid.*

⁶⁸⁵ *Ibid.*

porters among civilians for the specific realisation of the goals of the given government.⁶⁸⁶ After reviewing the relevant valid regulations, we may arrive at a similar conclusion.

The significance of this scope of issues is magnified by the fact that in a plural social order more and more interests and values are formulated, the channelling of which into governmental decisions is unavoidable in order to uphold social peace. However, social participation in governmental decision-making mechanisms should be legally settled, just like the hierarchy of laws. In a rule of law state social participation in legislative procedures is not an optional process depending on the attitude and discretion of the power holder.⁶⁸⁷ Moreover, in a democracy, especially in one of the participative type, the institutionalised system of proposing and opinion making will not only go through quantity changes ('more forums, better regulation...'), but also quality ones, which means that regarding these, normativity does not only mean the obligation to establish and create these institutions, but also 'making them unavoidable', thus ensuring their development through tools protected by law.

To summarize, it may be stated that one tool for alleviating possible political abuses typical in indirect democracy is the substantial participation of citizens and their organisations in public administrative decision making (legislation and the lawful influencing of individual cases), and the facilitation of this in a constantly 'broadening' scope. Several authors describe the benefits of social, especially civil participation. While the benefits listed below (studies prepared by Ádám Földes⁶⁸⁸, Ildikó Vadál⁶⁸⁹ and certain civil organisations⁶⁹⁰ form the basis of the following list) may emerge to different degrees depending on the form of participation, it is definitely true that through them

- the quality of governmental/local governmental decisions may be improved ('more input, better output');
- the examination of the interest structure of the given subsystem (in simple form: field of authority) becomes easier.⁶⁹¹ Let's add: examining the real interest structure, if this is not necessarily identical with the structure observable in reflection of governmental intentions;
- needs, information and problems which are not observable by the decision-maker, or just barely, may be revealed;

⁶⁸⁶ Tóth Judit: Civilek részvétele a jogalkotásban. [Participation of civil society in legislation] In: Tóth Judit (ed.): *Nonprofit jog*. [Non-profit law] SZTE ÁJK, Szeged, 2003. 18.

⁶⁸⁷ Vadál (n 679) 170.

⁶⁸⁸ Földes Ádám: A jogalkotásról szóló új törvény tervezet következményeiről, esélyekről. [About the consequences, of the new draft law on legislation. Chances.] In: Márkus Eszter (ed.), *Ismerd, értsd, hogy cselekedhess: Tanulmányok a részvételi demokrácia gyakorlatáról* [Know and understand in order to act. Essays on the practice of participatory democracy.] EMLA Egyesület, Budapest, 2005. 65–68.

⁶⁸⁹ Vadál (n 679) 171.

⁶⁹⁰ *A Társadalmi Egyeztetés Eljárási Normarendszere: NIOK Alapítvány, a Magyar Természetvédők Szövetsége és a Reflex Környezetvédő Egyesület ajánlása*. [The Norm System of Social Negotiation: Recommendation of the NIOK Foundation, the Hungarian Association for the Protection of Nature and the Reflex Association for the Protection of the Environment] TEEN Program, Budapest, 2007. 12. http://www.mtvsh.hu/tarsadalmi_egyeztetes_eljarasi_normarendszere_8211_teen_program> accessed 22 September 2013

⁶⁹¹ Ficzer Lajos: A minisztériumi feladat- és hatáskörök, valamint a háttérintézmények. [Tasks and competences of ministries and their background institutions] *Magyar Közigazgatás* (2000) 50(8) 478.

- the threat of the emergence of social conflicts decreases;
- the quality of conflict prevention and conflict management increases (obedience to the law also increases, as well as the acknowledgement of the decision by the addressee of the decision);
- the legitimacy of decisions increases;
- more transparent and more controllable governmental decisions may be delivered;
- experiences and professional knowledge may be channelled and accumulated at certain actors.

In consideration of the before-mentioned, this Part

- A) distinguishes those special forms of participation which approach the legislator (a state administrative body participating in legislation) directly, and
- B) distinguishes those institutionalised solutions through which the citizen or a particular (civil) organisation may influence the content of laws not by approaching the legislator (state administrative body participating in legislation), but through another state organisation.⁶⁹²

2.2. Civil tools in state administration directly influencing the legislator

2.2.1. Direct participation in program making and legislation without membership in bodies

I. Organisation of a national referendum proposal

Act CCXXXVIII of 2013 on Referendum Proposal, European Citizens' Initiative and Referendum Procedure states that the proposal of constituents on the settling of national referendum can be organised – among others – by associations as well, if the given question is connected with the scope of activities marked by the articles of association.⁶⁹³

II. Whistleblowing (public interest disclosure)

The whistleblowing directs attention to some circumstances the fixing or termination of which serves the interests of the community or the whole society. For our topic it is extremely important that a public interest disclosure may contain recommendations for legislation. [Article 141 Paragraph (3) of Act XXIX of 2004 on the amendment and repeal of certain laws as well as the establishment of certain regulations relating to Hungary's accession to the European Union]. The notion of complaint and whistleblowing (public interest disclosure), as well as the related deadlines are regulated similarly by Act CLXV of 2013 on complaints and whistleblowing to the way they were regulated before. However, there is a novelty in the regulation, namely that whistleblowing may be made in the protected

⁶⁹² For example, the initiation of the procedure of the parliamentary commissioner of fundamental right based on Article 24 Paragraph (2) Point e) and Article 30 Paragraph (1) of the Fundamental Law of Hungary.

⁶⁹³ Article 2 Paragraph (1) Point c) of the Fundamental Law of Hungary.

electronic system of public interest disclosure [Article 4 Paragraph (1)]. There is another important fundamental improvement, namely that the operation of the system belongs to the competence of the Parliamentary commissioner of human rights, and the reporting party may request the restriction of access to its personal data to the Parliamentary commissioner of human rights and his office. Another important element of the new regulation is that the ombudsman shall publish a short excerpt of each disclosure on the Internet [Article 5 Paragraph (2)], and the detailed rules of the protection of reporting parties were introduced too [Articles 11–12]. The act also considers those disclosures which are not directed to classic state or self-governmental bodies or bodies performing public tasks. In order to handle these notices more efficiently and to prevent abuses or punishments, the legislator introduced the institution of lawyer for the protection of the reporting person. Legal persons not qualifying as state or self-governmental bodies may conclude service contracts with lawyers for the performance of a task related to the receipt and handling of disclosures related to their activities [Article 17 Paragraph (1)].

III. Social negotiation and opinions

The two basic forms of social participation in the preparation of laws, general negotiation and direct negotiation appear in Article 7 of Act CXXXI of 2010 on social participation. The scope of the act covers opinion making by natural persons and non-state and non-local governmental bodies, organisations about draft laws and concepts of regulations grounding draft laws prepared by ministers. [Article 1 Paragraph (1)] According to Article 5 Paragraph (5) of the act – with the exception of some laws made in the fields listed in an itemised way in Paragraph (3) (e.g. draft law on the establishment of organisations or institutions) – social negotiation shall be initiated about the draft and reasoning of a) acts, b) decrees of government and c) decrees of ministers.

General negotiation provides for the possibility of giving opinion through the website of the body publishing the concepts or drafts, while the direct negotiation allows the relevant minister to request opinions directly from persons and organisations. The primary legal form of direct negotiation is the institution of strategic partnership – creating obligations also on the side of the minister – the framework of which is provided by an agreement determining several elements.⁶⁹⁴ Through these agreements, the minister responsible for the preparation of laws may establish close cooperation with those organisations which are ready for mutual cooperation, and which represent wide-scope social interests in the preparation of the regulation of the given legal fields, or perform scientific activities in the given legal field (hereinafter referred to as strategic partners). A substantive weakness of the regulation is that Article 13 Paragraph (2) of the act defines only in an exemplificative way – mentioning only some of the possible forms of organisations (e.g. registered churches,

⁶⁹⁴ A good example of strategic partnership is the strategic agreement established in November 2012 between Tibor Navracsics Deputy Prime Minister, Minister of Public Administration and Justice, as representative of the Ministry of Public Administration and Justice, and László Csizmadia, president and the representative of the Civil Cooperation Public Benefit Foundation, providing the organisational background of CÖF (Civil Cooperation Forum). Navracsics stated that ‘social negotiation is a basic condition of the good state, because it facilitates the enactment of good quality laws complying with real life conditions, as well as the representation of social groups affected by the law’.

trade unions, civil organisations) – with whom such strategic partnership may be established. Another specific (and problematic) rule is the one according to which the obligation of the strategic partner is to represent the opinion of organisations which are not strategic partners but operate in the given field of law [Article 14 Paragraph (1)]. In some cases this could mean that the opinion of the 'rival' organisation operating in the given field should be represented fully and credibly.

Another important rule [Article 14 Paragraph (2)] in this area is that in addition to the strategic partners the minister responsible for the preparation of the given law may integrate others into the direct negotiation of the relevant draft, and upon request it shall provide the possibility for participation in the review of the given law, as well.

However, it shall also be mentioned that the minister responsible for the preparation of laws may resort to other forms in addition to the abovementioned two for conducting negotiation (primarily for getting to know the opinion of non-strategic members).⁶⁹⁵ It is also important that the abovementioned act allows the legislator to define other opinion-making and negotiation rights in other laws and legal instruments of state administration.⁶⁹⁶

For assessing the real – practical – significance of the given legal institution it shall be considered that Article 5 Paragraph (5) of the act contains a special and often used rule, which states that 'The draft of the law shall not be put up for social negotiation if exceptional public interest requires its urgent approval'. Within the regulation and actual practice of national negotiation and review a significant aspect mentioned by literature is the capacity of public administration (in so far as with personal, technological and primarily temporal limits, the cautiousness of public administration may be easily explained). Therefore, the extension of the examined procedure with guarantee elements shall not result in disproportionate burden for state (administrative) organisations, endangering applicability.⁶⁹⁷

The real legal nature of broadly interpreted social review is shown by certain constitutional requirements related to the social players of the preparation of laws. According

⁶⁹⁵ It usually depends on the *ad hoc* decision of the ministries' management which draft law will be negotiated at public debate, conference and informal discussion, in order to discuss the text of the regulatory concepts and drafts. These forms usually take place in parallel with public administrative negotiation.

⁶⁹⁶ Beyond those set forth in the act on legislation – extending to strategic documents as well – there are rules among the provisions of Government Decree 38/2012 (III. 12.) on governmental strategic management about the social review of drafts. According to Article 15 Paragraph (1) of the abovementioned decree, 'If in relation with the given strategic document this decree regulates so, during preparation it shall be ensured for non-state actors to access the draft and express their opinion regarding it'. According to Article 16 Paragraph (1) of the mentioned decree within social review drafts shall be published also on the government website determined in Article 1 Point b) of Government Decree 301/2010 (XII. 23.) on the publication and review of draft laws and regulatory concepts (which theoretically means unlimited and free access) and it shall be ensured for everyone to express an opinion about it in a digital form (as well as about any other draft, as well). According to Article 19 Paragraph (1) of the mentioned government decree the person responsible for the preparation of the strategic plan documentation may initiate negotiations about the draft with selected non-state actors, in addition to a social review.

⁶⁹⁷ For example, Canada has traditionally used a two-level negotiation system: level 1: two public hearings are obligatory (one about the concept, one in case of the specific draft); level 2: ministry level; limiting the number of those invited/involved to 20–30 people or organisations (only the largest organisations and the most well-known experts are 'invited').

to the statement of the Constitutional Court made in its Decision 469/B/1990 CC, if the organisations drafting the laws do not comply with the obligations set forth in the Act on Legislation, this violation of obligations in itself shall not be sufficient reason for assessing the unconstitutionality of the enacted laws. Such violation of legal regulations about the preparation of laws may only ground the state administrative or political responsibility of the legislator.⁶⁹⁸ As the Constitutional Court expressed in its Decision 30/2000 (X. 11.) CC, only those organisations are unavoidable for the legislator which are expressly and specifically named in law(s) with the right to make statements – due to their role in the democratic decision-making process, with regard to the negotiation obligations – they possess public power.⁶⁹⁹ If the act does not define expressly and specifically those organisations with concrete rights, but only regulates rights of the interested national advocacy organisations in general, the Constitutional Court did not consider the lack of involvement of those organisations a violation of the rule of law [as later Decision 20/2001 (IV. 12.) CC referred back to this decision].⁷⁰⁰ This practice has not changed significantly after the approval of the Fundamental Law and the new Act on Legislation.

IV. Lobby activities

It is worth mentioning lobby activities in a separate subsection, with special regard to corruption, which is quite significant in Hungary.⁷⁰¹ The regulatory activities of ministries, or in a broader concept, governmental legislation, make the institutions of the government targets of lobbying. The creation of the topics and target persons of lobbying is determined by – in addition to the general structure of the governmental decision-making system – the level of development of the institutional system and decision-making processes of the government, achieved in relation to the extension of the role taking of the state.⁷⁰² During the performance of their tasks, civil servants represent a public administration which is more open than ever, which maintains wide-scale professional and social relationship networks, which detects and reacts on influences coming from society to an increasing degree. The appearance of ‘public policy communities’ show that players frequently get into contact with one another, realise their common interests and act together when formulating their professional needs. Players composing these communities are familiar with the elements of public policy institutions and procedures, and know the real significance of factors influencing the public policy decision-making mechanisms.⁷⁰³ Moreover, in Hungary it may also be observed that in order to increase the efficiency of the enforcement of interests, any decision which forms the conditions and elements of public policy procedures may become the subject of lobbying. These may be budgetary, institutional, organisational or personal issues (e.g. in some sectoral fields, interest groups do not represent strictly professional

⁶⁹⁸ Vadál (n 679) 184.

⁶⁹⁹ Ibid. 185.

⁷⁰⁰ Ibid.

⁷⁰¹ *A Közigazgatás Korruptió-megelőzési Programja 2012–2014* [The corruption prevention program of public administration 2012–2014] KIM, Budapest, 2012. 3–12.

⁷⁰² Lékó Zoltán (ed.): *Lobbikézikönyv*. [Lobby Handbook] Demokrácia Kutatások Magyar Központja Közhazsnú Alapítvány, Budapest, 2002. 25.

⁷⁰³ Ibid.

issues but strive to influence the appointment of executive officers). This is an important issue, even though in European countries the strictly centralised management of public administration usually significantly keeps away external interest groups from decisions affecting the internal operation of public administration.⁷⁰⁴

The aim of the lobby act submitted and approved in 2006 (Act XLIX of 2006 on lobby activities) was to channel the influence of business interest on public power (decisions) into legally regulated areas and to make them controllable. Therefore it did not target all forms of the enforcement of interests, but only those which were performed by ‘professional’ lobbyists or lobby organisations based on remuneration. The linking of strictly interpreted civil/non-profit organisations to lobby activities in Hungary is somewhat difficult to understand, because the scope of the previous act on lobbying covered only organisations performing lobby activities in a commercial manner (based on agreement, for remuneration) – thus did not concern the presentation of interests or arm twisting by organisations due to ‘commitment to their members’, ‘belief’, ‘patronage’, or ‘altruism’. Nevertheless several organisations which represent interests have operated as associations in Hungary, and – within some limits – it has never been prohibited for them to perform some activities in a commercial manner.

The act was valid for an exceptionally short period of time (only for four years): among the reasons for its failure were a) the fact that the majority of those representing economic interests favoured the concept of self-regulation;⁷⁰⁵ b) that the used common law elements were completely different from the Hungarian ones: several institutions appeared which were not interpretable for Hungarian political, administrative and legal culture, Hungarian public administration went into passive resistance;⁷⁰⁶ furthermore, the act became a quasi *lex imperfecta* by insufficient control mechanisms. Still, the most determinative feature was the narrow substantial scope of the act, the fact that it wished to regulate one narrow aspect of the issue – easily eluded by covering material interests – at a high level of abstraction, without listing or at least slightly regulating the other types of influence – extending the scope of lobby activities to those, as well. The previous regulation practically did not consider the fact that today only those organisations may achieve real results which have serious professional background and resources, and are able to keep up with the latest novelties of technological development – in each case through professionally organised transmission of information.⁷⁰⁷ The regulation considered lobbyists ‘in reality’, approaching the civil servant personally or by means of telecommunication, and neglected the more sophisticated, but very much influential, financed forms of pressuring [constant pressuring through ‘position papers’ summarising the official opinion, 1grassroots type lobbying’ (when many write on

⁷⁰⁴ Ibid.

⁷⁰⁵ See the presentations held at the 1st Hungarian Lobby Conference on 2 December 2004 in the Hungarian Parliament.

⁷⁰⁶ According to the report of the Justice Service of the Ministry of Public Administration and Justice, prepared in 2012, the 307 registered lobbyists tried to ‘officially’ influence only 316 (!) state or self-governmental measures within four years. Moreover, according to the report in relation with the approximately 3200 local governments the lobbyists approached the competent persons only in 30 (!) cases within four years.

⁷⁰⁷ Lékó (n 703) 26–27.

the same topic under their own name), or certain indirect tools of ‘community relations’ improving the consideration of the organisation by the decision-makers were fully excluded from the regulation.]

It was the failure of the previous lobby act which showed that in certain fields the state cannot intervene with its substitutive regulations even in the absence of self-regulation (which has been spreading significantly against central regulations): in some social fields permanent results may be achieved only through the consistent stimulation of self-regulating mechanisms, which is a slow and delicate solution, but lacks any alternative. This is the reason – partly – why the new lobby regulation creates obligatory rules related to the enforcement of interests only on the side of the civil servant receiving the lobbyist (by this strengthening the integrity of public administration),⁷⁰⁸ and otherwise it trusts itself to the already established criminal law barriers (e.g. the crime of bribery).⁷⁰⁹

In Hungary this concept – realising social realities – conflicted with the opinion of organisations regarding the previous concept. Thus Amnesty International, Greenpeace, the Társaság a Szabadságjogokért (Hungarian Civil Liberties Union, TASZ) and others approached the minister of public administration and justice with an open letter in 2012, complaining that after 2010 it was not regulated substantively how business associations and business interest groups (advocacy groups) may influence the possessors of public power: ‘Article 19 Section b) of Act CXXXI of 2010 on social participation in legislation annulled act XLIX of 2006 on lobby activities without replacing it with proper regulations. The possibility of strategic partnership ensured in Article 13 of the act concerns only a narrow field of the enforcement of interests. Through strategic partnership, ministries may establish direct relationship with those organisations ready for mutual cooperation which represent a wide range of social interests in the preparation of the regulation of the given legal fields, or perform scientific activities in the given legal field. This act is far from regulating lobbying properly. It provides exclusively for cooperation with the ministries, even though lobbying is more than participation in ministerial level legislation: each activity aiming at influencing a public power decision or at the enforcement of interests belongs to the scope of lobbying.’⁷¹⁰

In summary it may be stated (and it is confirmed by the letter of TASZ) that in Hungary the notion of lobbying may be apprehended in a broader context than commercial activities, and may be interpreted and regulated likewise.

⁷⁰⁸ Hungary undertook the obligation to establish *Codes of Professional Ethics* for civil servants and the employee protection public order approved by professional public bodies independent from the government [See, for example, section 1 of Government Decision 1080/2013. (II. 25.) on the approval of the action plan about the obligations of Hungary within the international initiative of the Open Government Partnership].

⁷⁰⁹ It has been a debated issue in Hungarian public administration at what level and at what depth the professional ethical norms enforceable within public service should be regulated; within the framework of the *Magyar Zoltán Public Administration Development Programme* – theoretically – the old approach is getting stronger again, which – within legal frameworks – would allow for the wide-scope self-regulation of those concerned.

⁷¹⁰ <http://tasz.hu/jogallamvedo?page=2>> accessed 10 May 2013

2.2.2. Participation in program making and legislation through membership in bodies

I. Consultation

In Hungary the broadest concept of consultation has been used in a triple interpretation (or meaning):

- a) on the one hand, the broader meaning includes the most comprehensive forms of social negotiation and review [System of National Cooperation (NER), National consultation];
- b) on the other hand, it includes the legal forms of negotiation and review described earlier;
- c) finally, it still includes the specific consultative forums, as well.

The present subchapter uses the third – narrower, more traditional – meaning as its starting point.

General issues of consultation

In relation to consultation, it may be generally stated that grounded decision making, quality governance and legislation require discussion with the interested parties, including consultation. Consultation is the involvement of those concerned in the procedure of decision making in order to create a real social negotiation. In this sense, therefore, the definition relates not only to negotiation in the preparatory phase, but also to the unique realisation of the shaping of political will, which happens in order to establish the content of the law based on compromises.⁷¹¹ ‘In the long run, social peace may be maintained by compromises through the politics of agreements. Governance may be ‘successful and good’ only if it takes into account the heterogeneity of those governed.’⁷¹²

The significance of consultation is also stressed by the European Commission, which published an announcement about consultation, supporting the notion that during consultation each of those concerned should be allowed to properly express their opinions.⁷¹³

In most member states of the European Union, separate, permanent forums have been established for macro-level consultation which facilitate the continuous relationship between the government and social partners and other representatives of interests – without the burden of immediate agreements – and within this they get the chance to familiarise themselves with one another’s opinion.⁷¹⁴ Beyond the narrow focus of issues related to the world of

⁷¹¹ Drinóczi Tímea: Minőségi jogalkotás és adminisztratív terhek csökkentése Európában. [Quality legislation and the reduction of administrative burdens in Europe] HVG-ORAC, Budapest, 2010. 32–33.

⁷¹² Vadál (n 679) 57.

⁷¹³ Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission. Communication for the Commission, COM(2002) 704 final.

⁷¹⁴ Ladó Mária – Tóth Ferenc: A konzultáció és intézményei az Európai Unióban, tagállamaiban és Magyarországon. [Consultation and its institutions in the European Union, in its member states and in Hungary] OFA, Budapest, 2002. 192.

labour, this covers also specific policy issues. In member states, macro level consultations aiming at globally shaping the economy and social policy are usually hosted within the institutional frameworks of prestigious, dominant forums.⁷¹⁵ Naturally, governmental-civil discussion should also be part of the social discussion. In addition to social partners, the representatives of civil organisations '[shall] also be present in the work of the consultative bodies of macro-level negotiations of interests'.⁷¹⁶

Nevertheless '[it] may be stated that the prestige of consultation is much lower in Hungary than in other member states'.⁷¹⁷ In Hungary the consultative role is often interpreted as of lower value, failure – also in the self-evaluation, self-assessment of the players; as a synonym of slow marginalisation in substantial – macro level – policy-making. This same fact lies in the background of the fact that in Hungary consultation, negotiation, cooperation is basically agreement-centred, bargain-oriented.⁷¹⁸ We shall also add that *today in Hungary consultation is [often] not the indicator or instrument of values, but of relatively quickly changing interests*. A closely related phenomenon (fact) is that while in most of the old member states consultation is substantial (ensured by legal guarantees) and constant, in Hungary – traditionally – a lower level of regulation and *ad hoc* character is dominant⁷¹⁹, a situation intensified by the exceptionally infrequent convening of certain forums.

The regulation regarding bodies operating alongside the Government (and ministries and other public administrative bodies) is individual: generally the operation of each body is settled by separate laws or legal instruments of state administration, which contributes to the fact that there is often parallelism or overlap in their tasks and competences.⁷²⁰ The functions of bodies operating besides the government are not always possible to separate; sometimes bodies with the same tasks operate under different names (e.g. inter-ministerial commissions or councils – see later).⁷²¹ The main reason for these difficulties is that 'in Hungary comprehensive, high-level framework regulations about the main types are still missing'.⁷²² This is true even if the provisions of Act LVII of 2006 on central public administrative bodies and the legal status of the members of Government and state secretaries and the valid Act XLIII of 2010 – with a similar name – on consultative bodies may be considered a few steps forward compared to the previous regulations.⁷²³ This means that the relevant legal regulation may be further detailed without terminating or substantially limiting the freedom

⁷¹⁵ Ibid.

⁷¹⁶ Bódi György – Jung Adrienn – Lakovits Elvira: *Civil partnerség. [Civil partnership]* KJK-KERSZÖV, Budapest, 2003. 190.

⁷¹⁷ Ladó – Tóth (n 715) 193.

⁷¹⁸ Ibid.

⁷¹⁹ Ibid. 194.

⁷²⁰ Vadál (n 679) 80.

⁷²¹ Ibid.

⁷²² Ibid.

⁷²³ According to Article 30 Paragraph (1) of the valid act, the Government may establish other – thus in addition to government commissions and cabinets further – proposer, review and advisory bodies. According to Paragraph (2) of the mentioned article, the members of bodies described in Paragraph (1), as well as the scope of people permanently invited to the meetings of such bodies are appointed by the normative government decision establishing the body.

of the government in establishing organisations.⁷²⁴ We do not necessarily agree that the issue should be regulated in more detailed constitutional rules,⁷²⁵ but it seems obvious that a detailed regulation at the level of acts is necessary. The more comprehensive regulation of consultative bodies is reasonable because the broadly interpreted governmental consultation goes beyond consultative bodies operating besides the government or ministries, and includes macro level forums independent from the governments, as well as territorial level mechanisms and specific bodies.

It must also be added that ‘By today a complex system of governmental consultative bodies has been established in all modern public administrative systems’.⁷²⁶ However, despite their significance and quantity, the social sciences pay relatively little attention to these institutions, having a role in the shaping of governmental decisions, ‘[even though] a new sector has emerged, the operation of which is essential for the quality of governmental activities and is also important for their transparency’.⁷²⁷

It should be noted that there is no good name for this system of organisations in Hungarian law.⁷²⁸ The expressions ‘background institutions’, ‘auxiliary organisations’, or ‘consultative organisations’, ‘institutions of social dialogue’, as well as ‘proposer-review organisations’ are (may be) imprecise and deceptive, especially because in some cases these – very diverse – organisations possess public power-like competences in addition to the narrowly interpreted consultative rights.

It is necessary to define the various types of these organisations scientifically and clarify – in a comparative manner – their role in decision making (in the preparation of laws). And due to the lack of a consistent legal regulation, it would be important to regulate their participation in the governmental decision-making system (in a more detailed form), with regard to their importance. (see later).

Grouping of consultative bodies

For the sake of transparency of governmental consultative bodies, they may be grouped according to the following aspects:⁷²⁹

- a) the scope and legal form of participating organisations;
- b) the features of civil cooperation;
- c) their method of selecting members;
- d) the legal regulation of the given body;
- e) the features and content of the members’ rights;
- f) the frequency of application; and
- g) the phase or level of governmental activities to which each (body) is related.

⁷²⁴ Vadál (n 679) 81.

⁷²⁵ Ibid.

⁷²⁶ Ibid. 17.

⁷²⁷ Ibid.

⁷²⁸ Ibid.

⁷²⁹ Vadál (n 679) 60.

Let's see them one by one:

Ad a) Types of governmental (state administrative) consultative bodies based on their members

Based on the scope of participating organisations Vadál distinguishes between internal consultative bodies of governmental activities and external consultative bodies of governmental activities. Among the internal ones, she lists those institutions (e.g. government committees, cabinets and inter-ministerial committees), in which only state bodies participate and the representatives of civil society (non-state bodies) are usually not present among the members. Among the external ones she lists those bodies within which, in addition to the representatives of governmental bodies, the institutions of the widest range of civil society are present: such as social organisations, representatives of interest (advocacy) groups, professional and expert organisations, representatives of science, professional chambers, etc.⁷³⁰ Within this grouping it is important that 'through these bodies, the interconnection between governmental activities and the activities of organisations interested in and concerned about decisions may be established. Through these bodies, the presentation of interests, their collision, striving for consensus, and the professional and scientific grounding of decisions may be realised'.⁷³¹

There is another grouping similar to Vadál's which, as one method of the presentation and enforcement of specific aspects of interests – significant in the preparation of governmental decisions – at each level and area of governmental activities [partly sectoral (strictly professional) and partly functional (beyond the aspects of certain sectors):

- aa) enforces the given (public policy) interests by establishing an independent coordinative mechanism or body (mainly relying on the staff of the state administration), or
- ab) introduces the institutional solutions – including external actors – of 'transmitting information' related to interests 'into governmental activities'.⁷³²

As has been mentioned before, both types of organisations may be put into the group of so-called governmental auxiliary bodies the 'common feature of which is that part or all of their activities is related to the governmental decision-making procedure with the aim that these decisions shall be well-grounded from all – professional, legal and political – aspects and the delivered decisions will be used also in reality'.⁷³³

Based on the abovementioned facts, it is clear that the two types of organisations are not identical: while the second – theoretically – serves the observation, aggregation of interests and their transmission to the decision-makers, the first one performs the channelling of the revealed interests, and the professional preparation of their presentation in the drafts of different programs and legal instruments, as well as their negotiation and concretisation within public administration.

⁷³⁰ Ibid. 61.

⁷³¹ Ibid.

⁷³² Balázs István: Magyarország közigazgatása. [Hungary's public administration] In: Szamel Katalin – Balázs István – Gajduscheck György – Koi Gyula (eds.): *Az Európai Unió tagállamainak közigazgatása*. [Public administration of the European Union's member states] COMPLEX Kiadó, Budapest, 2011. 745.

⁷³³ Ibid.

However, the majority of practical difficulties results from the lack of consistent regulation and the conflict of existing regulations related to the tasks and composition of these two ‘types’ of organisations and their relationship. For example, two consultative bodies of an internal and an external type have been established to represent Roma issues, but the relationship between the Inter-Ministerial Committee for Social Development and Roma Issues⁷³⁴ and the Roma Coordinative Council⁷³⁵ has not been clarified; the relationship based on government decisions and practical experiences is hardly interpretable and less transparent. Moreover, they have been convened only once so far this year.

This situation is further complicated by the fact that within the internal negotiation mechanisms of state administration (at the meeting of the Government performing final coordination, or in different coordinative and consultative mechanisms, bodies) the representatives of civil organisations (may) appear directly in several ways. For example – to continue with the above mentioned example – according to the Government Decree establishing the Roma Coordinative Council ‘[The] Government calls upon the leaders of central state administrative bodies to ensure, in case of laws related to the social development of Roma people defined in the legislation program of the Government, the possibility to provide opinion for the [civilian and non-civilian] members of the Council within the public administrative negotiation’. Furthermore, Section 49 of Government Decree 1144/2010. (VII. 7.) on the rules of procedures of the Government must be mentioned, according to which the administrative state secretary of the Ministry of Public Administration and Justice may invite external persons – for example representatives of civil organisations – to the meeting of the administrative state secretaries; and its Section 59 states that persons – for example representatives of civil organisations – invited personally by the Prime Minister may participate at the meeting of the Government.

⁷³⁴ Within the scope of the examined field the Inter-Ministerial Committee for Social Development and Roma Issues supports those written in section a) herein. The Government established the Inter-Ministerial Committee for Social Development and Roma Issues for improving the standard of living and social status of Roma people and those living in poverty and for the harmonisation of governmental activities aiming at facilitating their social integration. The primary task of the Inter-Ministerial Committee for Social Development and Roma Issues – based on Government Decision 1199/2010. (IX. 29.) on the establishment of the Inter-Ministerial Committee for Social Development and Roma Issues – is to harmonise activities related to social development, to make recommendations for the Government for the harmonised planning of the resource needs of tasks related to the social development and for the supervision of finances, as well as to coordinate and evaluate the execution of governmental tasks aimed at improving the standard of living and social status of Roma people and those living in poverty and at facilitating their social integration.

⁷³⁵ An institutional realisation of those written in section b) herein (in the examined field) is the Roma Coordinative Council established by Government Decision 1102/2011. (IV. 15.) on the establishment of the Roma Coordinative Council, which was established by the Government based on social partnership for the establishment and execution of measures facilitating the effective development of the Roma population, as well as for rendering an opinion about the results. The Roma Coordinative Council is an advisory, consultative body supporting social development, and in line with the aims of the Government it is a specific forum for transmitting information related to the interests of the concerned social groups into governmental work.

Ad b) Basic types of governmental (central state administrative) consultative bodies – from the aspect of civil cooperation:

1. bodies ensuring membership-like civil participation⁷³⁶ (mixed system);
2. bodies composed of the delegates of only (central) state administrative bodies (e.g. Sulinet Expressz Program [Internet at Schools Express Programme] Project Council⁷³⁷) – without civil organisational rights;
3. bodies composed of the delegates of only (central) state administrative bodies – with the possibility of direct channelling of civil interests;⁷³⁸
4. bodies composed exclusively of experts – without direct and expressed civil participation;⁷³⁹
5. bodies without any civil members that may make suggestions for the appointment of members (their opinion is requested in a formal procedure, e.g. Hungarian Design Council⁷⁴⁰).

Ad c) Main forms of establishing membership:

1. ministerial request and appointment – without civil cooperation (e.g. recommendation) before the appointment;
2. ministerial request and appointment – with the possibility (right) for civilian recommendation;
3. submission of a declaration of unilateral accession,⁷⁴¹ or declaration of will⁷⁴²;

⁷³⁶ The expression ‘civil participation’ primarily means those cases when the natural person participating in a consultative body is representative of a civil organisation, not in his own name, directly due to his professional expertise gained at the given field.

⁷³⁷ Government Decree 283/2003. (XII. 29.) on the tasks and operational rules of the *Sulinet Expressz Program* Project Council.

⁷³⁸ The president of the Inter-Ministerial Committee for Social Development and Roma Issues may invite other people – typically representatives of Roma civil organisations – based on its founding document.

⁷³⁹ See for example the composition of the Scientific Committee set forth in Article 6 Paragraph (1) of Government Decree 112/2011 (VII. 4.) on the (...) scientific committee supporting the work of the National Atomic Energy Office.

⁷⁴⁰ For the appointment of the members of the National Design Council (MFT) the president of the National Office of Intellectual Property makes a recommendation, for the creation of which he requests the opinion of related professional and interest representation organisations [Article 2 Paragraph (2) of Government Decree 266/2001 (XII. 21.) on the Hungarian Design Council].

⁷⁴¹ According to Article 1 of Ministry of Human Resources Decree 50/2012. (XII. 19.) on the National Patient Forum, any civil organisation may join the section of the National Patient Forum (herein after referred to as: NBF) in line with its activities with a declaration of accession sent to the Board of the NBF if the civil organisation operates in compliance with the act on civil organisations and performs its activities in the field of health care.

⁷⁴² According to Article 2 Paragraphs (1) and (2) of Government Decree 65/2000. (V. 9.) on the establishment and detailed rules of the operation of the Charitable Council, those public benefit organisations which want to become members of the Council may submit a related declaration of intent to the minister – and the minister shall automatically provide credentials for the representatives of those organisations which comply with conditions set forth in Article 1 Paragraph (2) and have submitted their declaration of intent.

4. naming a specific civil organisation in a normative source of law (e.g. HUNGARNET Association⁷⁴³, or earlier the National Association of Hungarian Artists);
5. by election based on the candidacy (application) system.

It is important that the abovementioned types do not cover all types operating in practice, with special regard to the fact that the mechanisms of selecting (civil) members and those of the establishment of membership are not fixed in each case. A practical difficulty which has been mentioned in the literature for a long time is that in case of bodies where there are provisions about the selection of civil members, in many cases it is still not clear what the exact mechanism is for their selection and what methods may be used to ensure the democracy of the procedure.⁷⁴⁴ This deficient legal regulation allows the government (any government, not just the current one) to select arbitrarily from among organisations formally complying with all conditions, not necessarily paying attention to their real social significance and professional preparedness.

Ad d) Legal regulation of consultative bodies – from the civil point of view:

Open legislation may become counterproductive if ‘the processing of opinions and the feedback procedure are not regulated and managed properly’ – says Vadál.⁷⁴⁵ Mentioning these elements is especially important regarding the domestic – external – consultative bodies, because these communication aspects provide the basis of many practical difficulties.

Ad e) Rights and tools available for the civil members or for the body with civil members:

1. review;
2. recommendations;
3. negotiation of interests;
4. preparation of decisions;
5. decision making;
6. coordination;
7. analysis and evaluation of execution;
8. lawsuit.⁷⁴⁶

⁷⁴³ Section 1 of Government Decision 1129/2013. (III. 14.) on the establishment of the National Information Infrastructure Development Program Council and the definition of its rules of procedure the Government established, as proposer, review and advisory body the National Information Infrastructure Development Program Council, and its Section 6 requests – among others – the president of the HUNGARNET Association to participate in the work of the Program council as a permanent member.

⁷⁴⁴ Héthy Lajos: Civil beszéd vagy ‘párt-beszéd’? [Civil speech or ‘party-speech’?] Napvilág Kiadó, Budapest, 2010. 96.

⁷⁴⁵ Vadál (n 679) 162.

⁷⁴⁶ The rule defined in Article 25 Paragraph (7) of Act XXVI of 1998 on the rights and equal opportunities of disabled persons, according to which against those violating the rights of disabled persons defined in law the National Council for Disabled and the national interest representative organisations of disabled persons may initiate a lawsuit.

Among – public power-like – rights which go beyond traditional consultative rights (the right to information, the right to negotiate, the right to make recommendations, the right to give an opinion) those will be mentioned through which decision making power is divided between the public administrative body (typically the Government) and the consultative body.⁷⁴⁷ In such cases the original possessor of the decision making right, who is responsible for decision making, cannot deliver the decision on its own, because the converting right (co-decision making right) of the mentioned body limits this. Naturally, in such cases the original possessor of the decision-making right cannot fully delegate the right to decision making or its responsibility for the decision (and the liability for its possible consequences), but with the self-regulating ‘delegation’ of certain elements of decision making it may ensure substantial participation and unavoidable control-possibility for the representatives of the targeted groups. A good – though as yet theoretical – example is the Framework Agreement established between the Government of Hungary and the National Roma Self-Government [ORÖ], based on which ‘Within their cooperation the Government and the ORÖ establish a draft government decree, in which they define the certain fields of intervention and the participants of the co-decision agreement and together with the bodies appointed for co-decision-making define the co-decision-making mechanism relevant for the given field, by taking into consideration, and keeping in line with, the valid EU and national procedural regulations’. In an exemplificative manner, the Framework Agreement defines those fields in which it wants to give to the ORÖ effective and substantial rights for the enforcement of interests: ‘The Government establishes the co-decision system primarily in the fields of programs aiming at the expansion of employment, increasing standards of education and improving standards of living, as well as of scholarship programs, investment and employment supports.’ It is clear, therefore, that the decision-making and co-decision-making rights may primarily contain partial rights related to tenders, funds, or personal issues, sometimes not in a substantial manner, but ‘only’ in the form of veto⁷⁴⁸ or quasi veto, these latter ones covering the elements which, for example, allow for the postponement of decision-making or the suspension of the execution of a delivered decisions.⁷⁴⁹

Ad g) Types of consultative bodies related to certain governmental levels:

We may distinguish between bodies based on whether they were created by the Government or independently of it. The best example for the latter is the National Economic and Social Committee established by Act CXIII of 2011 on the National Economic and Social Committee, which was created with the aim of discussing comprehensive ideas related to economic and societal development and national strategies existing through governmental cycles, and facilitating the elaboration and realisation of harmonised and balanced economic growth and related social models. The Committee was established as a consultative, proposer and advisory body independent of the Parliament and the Government, and as the complex and most diverse consultative forum of social dialogue between organisations representing employers’ and employees’ interests, economic chambers, civil organisations

⁷⁴⁷ Vadál (n 679) 61. and 86.

⁷⁴⁸ The exclusive right to recommendation and the right to initiative, as well as the right to consent and the fact that the decision is bound to a certain voting rate may be considered as such.

⁷⁴⁹ For details see: Rixer (2013) (n 657) 158–160.

operating in the field of national policy, national and foreign representatives of science, and churches defined in a separate act.⁷⁵⁰ It is worth noting that the solution is not unique in Hungarian legal development.⁷⁵¹ It is important that independence of the Government does not mean that during the activities of the forums, opinions of the Government and civil organisations cannot be directly in conflict or that the government cannot be substantially ‘influenced’ in some ways.⁷⁵²

In addition to the most comprehensive consultative mechanism(s), consultative bodies operating besides the Government and certain central state administrative bodies form a separate category; these partly appear in classic, sectoral fields (health care, education, social issues, economic issues⁷⁵³, etc.), and partly may be identified as intersectoral fields (e.g. see the before mentioned Roma issue).

In addition to consultative bodies operating besides or ‘between’ central state administrative bodies the territorial consultative bodies, or bodies with a consultative type of tasks should be mentioned, the majority of which may be characterised as so-called quasi state administrative bodies. These may also be called atypical mixed bodies, in so far as they appear neither as fully state administrative, nor fully local-governmental, syndicate types of bodies.⁷⁵⁴ It is true in general that the main reason for their existence is that the presentation of general and local interests, abilities and expectations could not be possible or reasonable at the same time at other forums or scenes. These creatures may be described as territorial cooperative mechanisms – typically aiming at program-making – in so far as they primarily try to act as forums for the exchange of opinions and for dialogue between civil and local-governmental and state administrative (types of) bodies (organisations). They are usually without organisational independence, but they are usually independent in exercising their tasks and competences.⁷⁵⁵ Examples of such are Regional Social Policy Committees or Regional Tourism Boards.

⁷⁵⁰ Article 2 Paragraph (1) of Act XCIII of 2011 on the National Economic and Social Council.

⁷⁵¹ The Economic and Social Council – *which has always operated in an unstructured way and without substantial rights* – was established in the building of the Parliament on 24 August 2004, and wished to remain a professional forum independent of the government and party politics ‘by discussing long-term national, strategic issues’. In the Council, national trade unions and employers’ interest representatives, and representatives of chambers, investors, *civil organisations* and science were present as members. The GSZT expressly aimed at being the forum of national consensus seeking to rise above everyday political fights. In this institution the different sectors were allowed to present their opinions about issues the nation was facing that would determine long-term development.

⁷⁵² For example, based on Article 153 Paragraph (1) of Act I of 2012 on the Labour Code, the Government shall receive authorisation to define in decree – after consultation in the National Economic and Social Council – about a) the lowest obligatory wage and b) the amount and validity of the guaranteed wage minimum.

⁷⁵³ See for example Government Decision 1166/2012. (V. 22.) on the reorganisation of the budget estimate from reserves available for extraordinary governmental measures in order to ensure the resources necessary for the performance of the tasks of the Corporate sector and the Government’s Permanent Consultative Forum.

⁷⁵⁴ Patyi András – Varga Zs. András: Általános közigazgatási jog (az Alaptörvény rendszerében). [General administrative law (Within the system of the Fundamental Law)] Dialóg Campus, Budapest, 2012. 329.

⁷⁵⁵ Ibid

Summary statements and general conclusions in relation to consultation

It is an assumption in legal literature – which goes beyond our specific subject – that the relationship of the established forums for the preparation of decisions and for negotiation, their specific role and significance should be clarified in law.⁷⁵⁶ For a long time the main question has been whether in the case of decision-making mechanisms supplemented with mainly informal, ‘customised’ elements, the strictness of the legal regulations (deeper and more accountable than today) – and of the transparency and higher level of legal security theoretically achievable by this – would impose great difficulties in reaching substantial compromises and using practical ‘quickly reacting’ methods. It may be stated that the different mechanisms aiming at the preparation of decisions should be formalised through more detailed legal provisions than today.⁷⁵⁷

Among further difficulties, on the one hand, the low level of professional preparedness and the material resources of social players (the latter may appear, for example, in relation to the costs of preparing an expert opinion), and, on the other hand, as the capacity deficiency of the governmental side, the lack of such civil servant staff – specialised in negotiating activities – in central public administration may be mentioned.⁷⁵⁸

2.3. Civil tools in local governmental administration which directly influence the legislator

2.3.1. Legal bases of civil participation

According to the Fundamental Law, the source of public power is the population which exercises its power through its elected representatives, or especially directly. According to Article 31 Paragraph (1) of the Fundamental Law, local governments operate in Hungary to manage local public issues and exercising public power. As Article 6 of Act CLXXXIX of 2011 on the local governments of Hungary (hereinafter referred as LGH) puts it: ‘During the performance of its tasks the local government:

- a) supports the self-organising communities of society, cooperates with these societies, ensures wide-scale cooperation of citizens in local public issues;
 - b) strengthens the self-funding ability of the settlement, reveals its opportunities and uses its own resources;
- (...).’

The mentioned provisions of the LGH facilitate the realisation of goals set forth in Act XXVI of 2010 on the promulgation of the additional protocol on participation in local public life attached to the European Charter of Local Self-Government made in Strasbourg

⁷⁵⁶ See for example: Trócsányi László: *Közjogi változások és a rendszerváltás*. [Public law changes and the transition] *Magyar Közigazgatás* (1993) 43(7) 5.

⁷⁵⁷ Kéri László: A kormányzati döntéshozatal szervezetszociológiai nézőpontból. [Governmental decision-making from an organisational point of view] In: Pesti Sándor (ed.): *Közpolitika: Szöveggyűjtemény* [Public Policy Reader] Rejtjel Kiadó, Budapest, 2001. 218.

⁷⁵⁸ Vadál (n 679) 171–172.

on 15 October 1985. According to the Charter, the right to participation in local public life means the right to define and influence the performance of the local governments' tasks and competences, for the enforcement of which right the law should provide tools (Article 1 Section 2).

2.3.2. General questions of the participation of local societies

Obviously, it is useful if we are able to define the main features of Hungarian local governmental societies generally, by putting them into a basic category established in international literature; for example, Almond and Verba distinguish between church community (convergent, but externally closed), servile culture, participative political cultures, and the political culture of citizens – which is an ideal mixture of the previously mentioned ones.⁷⁵⁹ However, instead of putting Hungarian civil society – in a very simplified way – into one of these categories, it be noted that among the specific characteristics of the Hungarian civil/non-profit sector, the practice of the individual enforcement of interests, instead of a wide-scale cooperation and the presentation of interests in public spheres, is still observable; furthermore, compared to Western-European standards, the pace of the flow of information to this sphere and within the sphere, as well as in relation to this the level of information supply may be considered rather low. National analyses repeatedly confirm that in 'civil public knowledge' the existence of local civil concepts is often barely known, just like – in the relationship with local governments – the existence, tasks and competences of the so-called civil advisors.⁷⁶⁰

It is a basic statement that the way to the integration of local communities leads through participation and cooperation.⁷⁶¹ This is why it is especially important from the aspect of the sustainability of local communities to analyse the set of tools providing possibilities of participation, the actual applicability and condition of such tools, as well as the relationship of local government (as local public power and the main forum of the presentation of local interests) and the organisations providing for the possibility of participation.⁷⁶²

The basic, main feature of forums for shaping local public will is that they provide institutionalised frameworks for citizens' participation in local public affairs.⁷⁶³ Depending on which form of participation is favoured by the settlement's representative body, the

⁷⁵⁹ Gabriel Almond – Sidney Verba: *The civic culture: Political attitudes and democracy in five nations*. SAGE, London, 1989. 16. – cited by Brachinger Tamás: *Helyi közösségek és helyi hatalom egy hazai középvárosban*. [Local communities and local power in a domestic medium-sized town] Eötvös József Főiskolai Kiadó, Budapest, 2010. 175.

⁷⁶⁰ Brachinger (n 760) 177.

⁷⁶¹ Csörgits Lajos: *A magyar helyi önkormányzati rendszer átalakítása: A demokrácia, a helyi közügyek és a helyi önkormányzás egyes kérdései*. [Transformation of the Hungarian local governmental system: Certain questions of democracy, local public issues and local governing.] Dphil. Thesis, Széchenyi István Egyetem ÁJK DI, Győr, 2013.

⁷⁶² Brachinger (n 760) 175.

⁷⁶³ Kiss Mónika Dorota: *A helyi közakarat formálásának fórumai a Mötv. Tükreben*. [The forums of shaping local public will in the reflection of the LGH] *Új Magyar Közigazgatás* (2013) 6(1) 11. and 16.

regulatory level of the different legal institutions may vary:⁷⁶⁴ the existence, elaboration and frequency of application of different forms of participation depend also on what types of problems (typical problems) the given society will face.

Based on the local governmental organisational and operational rules, it may be observed that by the regulation of wide-scale and various types of participatory rights, the representative bodies – based on the previous Act LXV of 1990 on Local Self-Governments (hereinafter: LSG), in line with European norms – have properly established the alternative forms of participation in local public life.⁷⁶⁵ Due to the provisions of the LGH, these forms of participation ‘exist’ also after 1 January 2013. Undoubtedly, it may be stated that the new legal regulation did not introduce any novelties: the unchanged regulation of these legal institutions show that the legislator does not consider this field especially important, or the earlier regulated forms of local participation are sufficient, and no need for change has emerged in this regard.⁷⁶⁶

The grouping of the forms of participation guaranteed by law is possible through the parallel examination of several significant aspects: these are, for example:

- whether the local application of these is obligatory or depends on local needs and requirements [thus the forum a) is regulated by law and is operated obligatorily, b) is regulated by law but its operation is not obligatory, or c) is not regulated by law, but is used (accepted) in practice];
- at what point the civil/non-profit organisation joins in and cooperates in the process of decision-making; thus whether the preparation of the decision, the delivery of the substantial decision, or the monitoring activities of the application of the decision is the connection point, and the specific subject of the cooperation;
- whether the given right is individual or collective;
- for which types of settlements (types of local governments) these are possible; and
- at which level of the hierarchy of laws the legal instrument providing for the enforcement of the right is present (e.g. fundamental law, cardinal act, act, decree, legal instrument of state administration).⁷⁶⁷

According to the LGH, in local public issues (matters) the local government expresses and realises local public will in a democratic form, by achieving wide-scale publicity [Article 2 Paragraph (2) of the LGH]. There are several ways for creating local public will: forms resulting in local governmental decisions⁷⁶⁸ are well distinguishable from those forms (forums) which cannot be reached by exercising competence (e.g. local popular initiative targets the discussion of the relevant topic at the body of representatives, for which the public hearing may also be a useful method...). The latter ones are primarily available for

⁷⁶⁴ Ibid.

⁷⁶⁵ Ibid.

⁷⁶⁶ Ibid.

⁷⁶⁷ Ibid.

⁷⁶⁸ The LGH regulates which body may deliver local governmental decisions: the body of representatives, the local popular initiative, upon authorization from the body of representatives the committee of the body of representatives, body or partnership of part of the local government, the mayor and the notary. [LGH, Article 41 Paragraph (3)].

arm-twisting, review, declaration of statement, presentation of interests, support of decisions, grounding of decisions and the preparation of decisions.⁷⁶⁹

2.3.3. Civil participation in program making and legislation through membership in bodies

I. The presence of those supported by the civil sector in local governmental and minority self-governmental bodies

At the election of local governmental representatives and mayors, certain civil organisations may act as so-called nominating organisations. This allows certain local organisations, their representatives (members, volunteers, sympathizers, supporters, etc.) to become elected members of representative bodies (general meetings). According to Article 3 Section 3 of Act XXXVI of 2013 on election procedure, the nominating organisation is: ‘(...) at the election of local governmental representatives and mayors at the time of setting the date of the elections any party, association, except for trade unions registered in the register of the court, if registered by the election committee as nominating organisation.’ Further details are set forth in Act L of 2010 on the election of local governmental representatives and mayors [e.g. Article 8 Paragraph (7), Article 9 Paragraph (2), Article 11 Paragraphs (1)-(3), and Article 11/A].

From the aspect of (nominating) minority civil organisations, it is also important that, according to Article 21/A Paragraph (1) of Act L of 2010, at the local governmental elections and at the interim elections held for the election of the whole representative body, the minority candidate may receive a mandate in a preferential way on the list of independent candidates. According to Article 2 section 14 of Act CLXXIX of 2011 on the rights of minorities, a minority organisation is any association registered in the court register of civil organisations, except for parties and trade unions, the goal of which – defined in its statutes – is the representation of the minority specified by the act.

Regarding the person elected after the civil nomination, it must be stated that after the elections he is liable to all citizens with the right to vote; and the contents of this responsibility, which go well beyond the relationship with certain organisations, are defined in law. [e.g. according to Article 32 Paragraph (2) Section k) of the LGH ‘The local governmental representative (...) shall keep contact with citizens with the right to vote, to whom he shall provide information about his activities as representative at least once a year.’]

II. The presence of those supported by the civil sector in committees

According to Article 41 of the LGH, committees are organs of the representative bodies which support the latter in performing local governmental tasks. Just as in cases of committees operating in other fields of public administration, their main function is to cooperate in the preparation of decisions by their recommendations, opinions and propos-

⁷⁶⁹ Kiss M. (n 764) 16–17.

als and to supervise the execution of the decisions. However, the role of the committees of the representative bodies goes beyond the functions of proposing, opinion making and supervising. Committees operating in the local governmental organisation are syndicate bodies elected by the body of representatives; their legitimacy indirectly derives from the community of citizens with the right to vote, indicated by the LGH as holders of the right to self-government. This is the basis upon which – as mentioned before – based on Article 41 Paragraph (3) of the LGH, they are authorised to deliver local governmental decisions.⁷⁷⁰ In summary, it may be stated that basically three large groups of tasks belong to the competences of committees:⁷⁷¹

- a) preparation of decisions,
- b) supervision of the execution of local governmental decisions, and
- c) exercising decision-making rights.

According to Article 57 Paragraph (1) of the LGH, those persons may also be elected as members of the committee – by the decision of the representative body – who are not representatives of the local government. It is important that at the meeting of the committee the rights and obligations of those members who are not local governmental representatives are identical with the rights and obligations of the local governmental representatives.⁷⁷² The direct barrier before transforming external – sometimes ‘civil’ – interests into decisions is the rule that ‘the chairman and at least half of the members shall be appointed from among local governmental representatives’ [Article 58 Paragraph (1)].

It is an important question whether it is possible to replace a committee member at the meeting of the committee with another member (maybe someone belonging to the same civil organisation) or with an external person (also maybe belonging to the same civil organisation). The LGH – like its predecessor the LSG – does not allow for substitution [about this see Decision 43/2009. (IV. 3.) CC].

The committee system facilitates the establishment of a differentiated work division in the local governmental organisation for more effective performance of local governmental tasks. The fact that not only local governmental representatives may hold membership in committees allows for the integration of experts – sometimes delegated by civil organisations – into the work of the committee, whose contribution increases the grounding and professionalism of decisions. The committee system allows for the widening of the democratic bases of local governmental decisions, partly through non-representative members bearing the same rights and obligations as other committee members, and partly because based on the legal regulation, the representative body is able to create operational rules which facilitate the integration of representatives of self-organising local communities, civil organisations, the local economy and service providers into the work of the committee with consultative rights (see later).⁷⁷³

⁷⁷⁰ Nagy Marianna – Hoffman István (eds.): A Magyarország helyi önkormányzatairól szóló törvény magyarázata. [Explanation of the Act on Hungary’s local governments] HVG-ORAC, Budapest, 2012. 220.

⁷⁷¹ Ibid. 224.

⁷⁷² It is important that LGH also touches upon other issues of the legal status; it contains provisions – among others – on the oath, conflict of interests, unworthiness or resorting to cost refund (Article 40).

⁷⁷³ With those obligations set forth in the LGH – e.g. the obligation to establish certain commissions – the body of representatives has received great freedom in determining its commission structure, the number

2.3.4. Civil cooperation in program making and legislation without membership in bodies

I. Whistleblowing (public interest disclosure)

See those written in section I of subchapter 2.2.1

II. Recommendation at public hearing

According to Article 54 of the LGH the representative body shall – obligatorily – hold a previously announced public hearing at least once in every year, at which the local population and representatives of locally interested organisations (thus not only civil organisations) may raise questions and make recommendations related to local public affairs. The significance and importance of recommendations formulated at the public hearing (not including the public hearing regulated in Act CLXXIX of 2011) is strengthened by the fact that the imposed recommendation or question shall be answered at the public hearing or within 15 days. The latter rule is the only really problematic point, because regarding the procedure related to public interest petitions, complaints and reports – as has been referred to – there are provisions set forth in Articles 141–143 of Act XXIX of 2004 on the amendment and repeal of certain laws as well as the establishment of certain regulations relating to Hungary's accession to the European Union.⁷⁷⁴

The mentioned provisions were not annulled after the approval of the LGH, therefore those and the rules of the LGH about public hearing 'concur' with each other. The legislator may interpret this seemingly double regulation in different ways: it may start from the assumption that the legislator consciously used different deadlines and thus invalidated the 'main rule' with regard to questions and recommendations – which may be managed as

of members of certain commissions, the tasks and competences of commissions and the rules of their operation in its organisational and operational rules. The Act provides not only for the establishment of permanent commissions, but temporary, so-called *ad hoc* commissions may also be established for certain local governmental tasks, for the period of performing the task. For the composition, election and operation of these – in the absence of any specific legal regulations – the rules on commissions shall be applicable [this is supported by *Constitutional Court* Decision 68/1992. (XII. 21.) CC].

⁷⁷⁴ Article 141

(1) State and local governmental bodies shall manage complaints and public interest reports in compliance with this act.

(2) Complaint is a petition which aims at terminating the violation of individual rights or interests, and its management does not belong to the scope of any other procedures – especially court or state administrative procedure.

(3) Notice of public concern draws attention to circumstances the correction or abolition of which serves the interest of the community or of society as a whole. A notice of public concern may contain recommendations, as well.

Article 142 Paragraph (1) Complaint and notice of public concern shall be examined within thirty days following its receipt.

(2) If it is assessed in advance that the analysis grounding the decision requires more than thirty days, the complainant (reporter) shall be informed about this within fifteen days following the receipt of the complaint (notice), by stating the expected completion date of the procedure.

complaints and reports – raised at public hearings. It may also consider – and through this it may arrive at a different conclusion – that the obligation to answer set forth in the LGH is not identical with the provision of the accession act regulating management [Article 141 Paragraph (1)],⁷⁷⁵ and judgement [Article 142 Paragraph (1)], in so far as the former criteria may be fulfilled if the obligor announces to whom it wishes to transfer the issue; while in the latter case(s) substantial steps shall be made, thus – remaining with the previous example – the actual forwarding of the issue shall take place.

Based on the LGH, the public hearing shall be regulated in the organisational and operational rules. With regard to this, attention must be drawn to the previous practice – which is definitely unlawful from this time forth – which regulated public hearings in the annex of the organisational and operational rules, and in its exhibit: the annex is an integral part of the decree, but it is not available for formulating rules of behaviour.⁷⁷⁶

We shall also draw attention to the fact that in Hungary the local population often considers the facultative village meeting, rather than the obligatory public hearing, as the basic forum of the local government, as the primary form of participation in local public life. In the opinion of Kiss, due to the interdependency established between the two institutions, the rules of public hearing – in a normative way and also in practice – strongly determine village meetings.⁷⁷⁷

The reason for the – upheld – separation of the two institutions is that the typical subject of village meetings is notification about important events affecting different local sectors and the expression of related opinions. Among others, the issues which belong here are the local governmental budget decree draft; time proportionate realisation of the annual budget, next year's plans and directions of development, financial concepts, the activities of the local governments in the business year, improvement of public services for the population, major settlement development goals, and the most important events of the preceding period.⁷⁷⁸ In the regulation of this forum, local features may be enforced well, as well as the ideas of the representative body, as there are no obligatory rules.⁷⁷⁹

III. Participation at other forums

According to Article 53 Paragraph (3) of the LGH, the representative body in its organisational and operational rules regulates the order of those forums (settlement, town policy forum, town-part meeting, village meeting, etc.) which facilitate the direct provision of information for the population and for associations, as well as their involvement in the preparation of the most important decisions. The act regulates that the representative body should be informed about statements and minority opinions emerging at these forums. In Hungary these forms, defined with a variety of expressions – regulated typically in organisational and operational rules or earlier in the so-called forum regulation – are the following: settlement policy forums, town district meetings, group meetings, social discussions, complaint

⁷⁷⁵ Kiss M.(n 764) 19.

⁷⁷⁶ Ibid.

⁷⁷⁷ Ibid. 20.

⁷⁷⁸ Ibid. 21.

⁷⁷⁹ Ibid.

boxes, opinion boxes, forums for the exchange of opinions, public forums for the negotiation of interests, the meetings of some sections of a settlement, holiday area discussions, open hours, round table discussions, public opinion surveys, brainstormings, open days, civil forums, settlement visits, area visits, telephone client services, and community work(!). The definition and regulation of this last as a form of democratic participation is rare.⁷⁸⁰

Based on surveys, the literature shows that these legal institutions are not only regulated in local instruments, but most of them have actually been used in the process of establishing public will.⁷⁸¹ The significance of this is not reduced by the fact that these forums have usually had a low rate of participation.⁷⁸²

Some authors consider the introduction and increasing application of further techniques and methods necessary, such as:

- a) the institution referred to as participatory budgeting, which is ‘the definition of the composition and ratios of the settlement’s budget and the supervision of its application through a transparent and annually held dispute and planning process open for all residents’;⁷⁸³
- b) a ‘Citizens’ Jury’: the essence of this is the facilitation of the management of local issues (public affairs) by establishing a lay ‘mini-society’ of 15–25 people in a way that the body creates public policy recommendations to the decision makers of the settlement;
- c) holding a consensus-conference (as public meeting of experts and citizens – for elaborating mutual development recommendations);
- d) holding a deliberative poll, in so far as it measures the opinions of those concerned (provides an answer) before and after getting to know an issue in details, focusing on a substantial flow of information and on providing possibility for debate;
- e) organizing a so-called future search, in so far as they try to make the subjects of decisions participate in the preparation of and debate about the decisions influencing their environment with active organisational work.⁷⁸⁴

We only wish to refer to the fact that the effectiveness of civil participation may be significantly increased by those indirect forums, at which civil participants do not (necessarily) get into direct connection with the representatives of public administration organisations, but negotiate among themselves, either locally or at a county level, in order to prepare a stronger joint action. In the years following 2000, several Civil Negotiation Councils were formed (e.g. in Nyíregyháza on 24 February 2004). However, such initiatives may operate firmly if – formally or informally – they are completed with the representatives of public administrative bodies. This is a less well-researched area, about which there is not much information available.

⁷⁸⁰ Ibid. 17.

⁷⁸¹ Bencsik András – Burai Petra – Csefkó Ferenc – Fábián Adrián: Az önkormányzatok átlátható, korrupciómentes működése. [Transparent and corruption-free operation of local self-governments] *Új Magyar Közigazgatás* (2012) 5(7–8) 67.

⁷⁸² Ibid. 59.

⁷⁸³ Pataki György: Bölcs laikusok: Társadalmi részvételi technikák a demokrácia szolgálatában. [Wise laics: Techniques of social participation in favour of democracy] *Civil Szemle* (2007) 4(3–4) 145.

⁷⁸⁴ Reisinger (n 207) 60.

It is also a long-mentioned fact that – among others – the effectiveness of cohesion policy in the EU could be significantly increased if local, territorial, and if possible, regional levels and the certain states prepared their own participation plans regarding which players they would include in what kind of local, regional decision-making procedure, for what period of time and what techniques they would use.

IV. Advisory rights

This is a right which does not originate from membership in bodies, but is closely related to it. The possibility of exercising advisory rights goes beyond participation in the basic institutions, ensuring the publicity of exercising public power and democratic operation, such as the meeting of the representative body, as well as the possibility of getting to know the data recorded there⁷⁸⁵. According to Article 53 Paragraph (3) of the LGH, the representative body shall regulate in its organisational and operational rules the representatives of which self-organised communities shall have advisory rights in their scope of activities at the meetings of the representative body and its committees. Naturally, those speaking with advisory rights shall also comply with the debate order set forth in the decree of the local government, thus also the ‘time limit set forth for the contribution’⁷⁸⁶.

V. Initiating local referendum

In line with legal regulations, a local referendum may be held about issues belonging to the tasks and competences of the local government. [Article 31 Paragraph (2) of the Fundamental Law of Hungary] The significance of this institution is increased by the fact that according to Article 3 Paragraph (4) of the LGH ‘Citizens with the right to vote exercise their right to self-government through their elected representatives and by participating at local referendums’. From the standpoint of our topic it is very important that according to the provisions of the LSG, valid till 2014, local referendums could have been initiated at the mayor by – among others – the managing body of the local association [former Article 47 Paragraph (1) Section c)]. The real significance of the initiation of a local referendum is granted by the fact that the result of the referendum is obligatory for the body of representatives (provided that the referendum was valid and successful), and it shall be considered a local governmental decision also based on the new regulation. The newly created law, Act CCXXXVIII of 2013 on Referendum Proposal, European Citizens’ Initiative and Referendum Procedure, states that the proposal of constituents on the settling of local referendum can be organised – among others – by associations as well, if the given question is connected with the scope of activities marked by the articles of association.⁷⁸⁷

Another similar institution – lacking the obligatory force – was the popular initiative (also valid till 2014), through which any issue could be brought to the body of representatives, on which the decision was made by the body of representatives as it was considered

⁷⁸⁵ For details about these institutions see Decision Köf. 5036/2012/6 of the Local Governmental Council of the Curia.

⁷⁸⁶ Decision Köf. 5030/2012/9 of the Local Governmental Council of the Curia.

⁷⁸⁷ Article 35 paragraph (1).

their competence. In case of the relevant initiative of sufficient number of citizens with the right to vote, the body of representatives was obliged to discuss the issue raised [former Article 49 Paragraph (2) of the LSG]. Popular initiative was repealed by the abovementioned Act, as well.

3. Tools influencing the legislator indirectly, through other bodies

Here those possibilities will be presented through which a citizen or a civil organisation influences the contents of laws enacted by competent public administrative bodies by approaching not the legislator, but another state organisation. In some cases, these mechanisms may make the chances of influencing the legislator rather indirect, and sometimes – as will be shown – quite distant (through the initiation of the review of the content of the given law, which may lead to the annulment of the law or legal regulation by the Constitutional Court). Such tools may be, among others,

- 1) Constitutional complaint. According to Article 24 Paragraph (2) Section c) of the Fundamental Law, based on the constitutional complaint, the Constitutional Court – which may be approached also by the civil organisation concerned about the given issue – reviews the harmony of the law used in the individual case with the Fundamental Law.
- 2) Initiating the procedure of the parliamentary commissioner for fundamental rights. According to Article 24 Paragraph (2) Section e) of the Fundamental Law, upon the initiative of the Government, one-fourth of the members of Parliament, the president of the Curia, the Chief Prosecutor or the parliamentary commissioner for fundamental rights, the Constitutional Court reviews the harmony of laws with the Fundamental Law within the frameworks of subsequent norm control. The related procedure of the parliamentary commissioner of fundamental rights may be initiated by anyone, in line with Article 30 Paragraph (1) of the Fundamental Law.

4. Summary

In summary we can draw the conclusion that both the individual segments of civil society, the political culture and also the administrative bodies participating in legislation must improve to comply with the already existing legal framework of statutory instruments.

It can be stated that the Hungarian legal system makes it possible to channel the direct and institutionalised participation of civil entities within program- and law-making activities of organs belonging to public administration, but real deficiencies can be detected concerning the material and legal consequences of different initiatives, the frequency of convening various corporate bodies, and the mere formal mode of operating the particular mechanisms.

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